DOMINION AUTONOMY IN PRACTICE

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BY

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PREFACE

WHEN the first edition of this work appeared in 1921, its title *Dominion Home Rule in Practice* expressed what then still was the governing conception of the Dominion ideal, complete self-government in all local affairs Since then the Empire has seen a steady expansion in the aspiration of the Dominions, and at the Imperial Conference of 1926 a Committee consisting of the Prime Ministers of the Empire and the Heads of delegations attempted a definition of Dominion status, which was unanimously accepted by the Conference. The British Empire, it was held, defied classification and bore no real resemblance to any other political organization which now exists or has ever yet been tried. But they added: 'There is, however, one most important element in it which, from a strictly constitutional point of view, has now, as regards all vital matters, reached its full development—we refer to the group of self-governing communities composed of Great Britain and the Dominions. Their position and mutual relation may be readily defined. They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.'

This pronouncement, we must remember, was made under peculiar conditions. The Prime Minister of the Union of South Africa, a steadfast advocate for many years of the right of the Dominions to secede from the Empire, was anxious to prove to his followers that within the Empire sovereign independence could be attained, and the representative of the

Irish Free State was no less concerned to prove that Mr. de Valera was wrong in asserting that Dominion status involved subordination to the United Kingdom. The definition of the Committee, therefore, contains in it an element of anticipation, and the Conference itself had to leave the application of its doctrines to an expert Committee, whose recommendations would fall to be considered at the next Imperial Conference. It is the aim of this edition to state the present practice as regards the autonomy of the Dominions; the ideal of 1926, it will be seen, is not yet wholly achieved; but the path to further progress presents no difficulties which cannot easily enough be surmounted, if they are approached, as they will be, in the spirit of goodwill and mutual loyalty, based on allegiance to the King as the symbol of Imperial unity and himself by his personality a most potent factor to this end.

A BERRIEDALE KEITH

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CHAPTER I

THE GOVERNMENTS OF THE DOMINIONS

1. *The Dominions and their Dependencies*

ALL those territories which acknowledge the sovereignty of the King, including the United Kingdom of Great Britain and Northern Ireland, constitute his dominions, but the Colonial Conference of 1907, paying a graceful compliment to Canada, formally adopted the style Dominion to denote those parts of the royal possessions, other than the United Kingdom, which had attained the full measure of responsible government, and had ceased to be dependencies. At that moment the sister nations were the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland. To them was added, after a long struggle (1916–21) approaching the dimensions of a civil war, the Irish Free State, accorded Dominion status by the articles of agreement for a treaty between Great Britain and Ireland of 6 December 1921, and organized, under a definitive constitution providing for responsible government, by an Act of 1922. The term Dominion fails perhaps to emphasize the importance of these territories; the prophetic insight of Sir John Macdonald sought for the Dominion of Canada on its creation in 1867 the higher style of Kingdom, but fear of irritation to the United States through this insistence on the presence of monarchic institutions near republican soil induced Lord Derby to veto the proposal

Of the Dominions, New Zealand, Newfoundland with its great dependency of Labrador (secured by decision of the Privy Council in 1927 against the claims of Canada), and the Irish Free State have unitary constitutions, a single Parliament exercising full authority over the whole territory. In the Union of South Africa the constitution is essentially unitary as the title shows, but, in deference to the federal preferences of Natal and the Cape of Good Hope, authority much wider than that of local governmental bodies is vested in provincial

legislative and administrative authorities, though the Union Parliament has supreme power. Canada and Australia, on the other hand, have true federal constitutions, for in each power is shared between the federal and the local governments and legislatures on definite principles which neither can vary, and which can be altered only by constitutional change effected in a strictly defined manner. The non-federal constitutions are essentially flexible in character, while, as follows from their nature, the federal constitutions are rigid.

All the Dominions save the Irish Free State have territories which stand apart from the normal administration. The federal government of Canada controls the Yukon and the North-west territories whose scanty population renders provincial status unattainable. The Commonwealth of Australia controls the Northern Territory, formerly part of the State of South Australia, and the Federal Capital Territory, once part of New South Wales; and beyond Australian limits Papua and Norfolk Island, which are British possessions, and, under mandate from the League of Nations, the former German Territory of New Guinea. New Zealand administers the Cook Islands, which are part of her territory, the Ross Dependency in the Antarctic, and the Union Islands, and the mandated territory of Western Samoa, while she shares with the Commonwealth and the United Kingdom the mandate for the rich phosphate island of Nauru. The Union of South Africa holds in mandate South-west Africa, formerly in the hands of Germany, and contemplates its transformation into a fifth province of the Union. Labrador is still too undeveloped to become effectively part of Newfoundland and in some degree is administered as a dependency.

2 *Cabinet Government*

The Dominions have accepted from the United Kingdom the system of Cabinet government. Its demerits have not passed without criticism. Labour opinion in Australia and elsewhere has suggested elective ministries to avoid the loss of energy in the system of a changing political executive, and the fathers of federation in the Commonwealth were so enamoured

of the federal system that they believed that it might result in the discarding of the British system of cabinet rule and the adoption of the American plan of a non-parliamentary executive. In Canada, on the other hand, when the Dominion was created, the British system was deliberately preferred, and in Australia itself responsible government has triumphed, despite its more rigid federalism. It is significant that the framers of the constitution of the Irish Free State deliberately accepted the doctrine of responsible government, and even went so far as to provide for its application by law, thus departing vitally from the British rule, followed in the Dominions generally, under which responsible government rests on constitutional practice. The innovation, as events in 1927 proved, is not without danger and inconvenience, and the other Dominions have shown no disposition to follow the Irish example. In all cases the tendency has been in practice more and more closely to adopt the usages of the British constitution as the natural outcome of the development in political stature and experience of the Dominions. In the States of Australia and the Canadian Provinces the same system holds sway, but the rules of its operation are observed with less strict conformity to British practice.

The place of the King in the British polity is taken in the Dominions by a representative of the Crown, styled Governor-General in the Dominions other than Newfoundland, Governor in that Dominion and in the Australian States, and Lieutenant-Governor in the Canadian Provinces. Lieutenant-Governors are appointed by the Governor-General of Canada on the advice of his ministers, the Governors-General and Governors by the King on the advice of the Imperial Government. But in every case care is taken to ascertain that the person chosen will be acceptable to the Government concerned, and since 1921 the choice of the Governors-General has largely been dictated by the Dominion Governments, especially in the case of the Irish Free State. But His Majesty's wishes are essentially considered.

The Governor is charged by statute law with the most varied duties, and in addition he exercises by grant from the

Crown the whole ambit of the royal prerogative, in so far as it is necessary for the administration of the Government of the Dominion, including the prerogative of mercy Judicial interpretation of late years has recognized the widest extension of this power; the Privy Council in 1916 ruled that Lieutenant-Governors had authority to incorporate companies, though the power had in fact never been used without special delegation. The prerogatives withheld are those only which in British law are deemed to appertain only to a completely sovereign power. They include the right to declare war or neutrality and make peace; to conclude treaties; to accredit diplomatic agents, to annex territory; to confer titles of honour; and to issue coinage. In special cases any of these rights may be conceded, but they do not pass save by a special grant. Tenure of office is at the pleasure of the Crown, advised by the Imperial Government, but is normally five years.

The vast powers of the Governor (to use for convenience this generic term) are exercised, under constitutional law or usage, only according to the advice of ministers This is a practice which has steadily developed with the consolidation of responsible government in the Dominions In the early days of responsible government a measure of discretion was vested in the Governor by the royal instructions which he received on appointment. In special the convention grew up that, while in the United Kingdom a defeated ministry might obtain one dissolution to test the will of the people, a defeated colonial ministry might be denied the right to dissolve, if the Governor could find other ministers willing and able to carry on the Government This usage was in some measure prompted by the fact that, especially in Australia, the duration of Parliament was short, and penal dissolutions seriously penalized members in loss of pay and cost of a fresh election, and wasted time which could be used in legislation. The right to refuse was exercised thrice in the earlier years of the Commonwealth, but from 1914 to 1920 Sir R Munro-Ferguson adhered strictly to the British practice in circumstances in which Dominion usage would have suggested a different line of action In 1926, however, Lord Byng in Canada refused

Mr. Mackenzie King a dissolution, but found that Mr. Meighen, who took office on the resignation of Mr. King, was unable to carry on without an appeal to the people Mr King challenged the constitutionality of the Governor-General's action, and the general election gave him so decisive a majority that it is clear that the attitude of Lord Byng was disapproved. The issue was naturally raised by Mr King at the Imperial Conference of 1926, which resolved that 'it is an essential consequence of the equality of status existing among the members of the British Commonwealth of Nations that the Governor-General of a Dominion is the representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great Britain, and that he is not the representative or agent of His Majesty's Government in Great Britain or of any Department of that Government'. The essential result of this pronouncement, which is inapplicable to the States or Provinces, is to require the Governor-General to assimilate his official action to that of the King in the United Kingdom. It does not mean that he is deprived of all authority to refuse to act on ministerial advice, for, if for instance after one unsuccessful dissolution ministers asked him to grant another, he would clearly be bound to refuse thus to violate the constitution. But it means that he should, save in extreme crises, accept the advice of ministers, as readily as did the King in 1924, when he dissolved Parliament at the request of Mr Ramsay MacDonald without trying to find an alternative government.

The Conference resolution brought to a close as regards the Governors-General, when desired by the Dominion Governments, their function as intermediaries between the British and Dominion Governments. It was held that this practice might be deemed inconsistent with the new status of the Governors-General, and that communications might go direct from Government to Government. Accordingly in 1927 the new rule under which communications no longer pass through the Governor-General's hands was adopted in Canada, the Union, and the Irish Free State. To remedy the loss of know-

ledge of his Government's proceedings thus arising, the Conference laid it down that the Governor-General should be kept fully informed of Cabinet business and public affairs, as is the King in Great Britain, but this rule is scarcely observed in practice.

The ministry is formed on the same principles as those in force in the United Kingdom It owes its cohesion to the subordination of its members to the Prime Minister, who is commissioned by the Governor to form an administration, and on whose resignation or death the ministry is dissolved automatically, ministers retaining office merely until re-appointed to the Cabinet or superseded. The right of the Governor to select his Prime Minister is, of course, subject to the inevitable restrictions that the person chosen must be capable of forming a Government; it is, however, much more common in the Dominions than in the United Kingdom for the retiring Prime Minister to suggest the name of his successor The choice of his colleagues rests normally with the Prime Minister, subject to party exigencies; in the case of Labour Governments in Australia the practice is for the party caucus to select the ministry and practically, though not in form, to dictate the choice of the Governor In the Irish Free State the matter is regulated by law; the President of the Executive Council is chosen by the Dail Eireann, he then nominates his colleagues not exceeding twelve in all, with the assent of the Dail. He and they must retire from office if they cease to retain the support of a majority of the Dail, and a dissolution may only be granted to a ministry which has such a majority The measure of control exercised by Prime Ministers is mainly a matter of personality; the cases of Sir John Macdonald and Sir Wilfrid Laurier in Canada, Mr. Richard Seddon ('King Dick') in New Zealand, General Botha in the Union, and Mr. W. M. Hughes in Australia illustrate the power of men of forcible character and clear outlook. The rules of Cabinet solidarity are observed with increasing strictness; as in the United Kingdom, lack of discipline is usually proof of weakness and approaching defeat Coalitions, however, are frequent, and in them, as in

Australia under Mr. Bruce's Prime Ministership, it is difficult to secure cohesion or effective loyalty. Ministers outside the Cabinet are a comparatively recent innovation in the Dominions and cases are few, in the Irish Free State the constitution provided for extern ministers responsible individually for their departments to the Dail by which they were nominated; but it was soon seen that ministers must be organically related to the Executive Council in matters of finance, and in 1927 the experiment was virtually abandoned.

The Cabinet constitutes the Executive (in Canada Privy) Council, in Canada, the Commonwealth, the Union, Victoria, and Tasmania ex-ministers remain nominally members, but are not summoned to its meetings; in Canada the similarity to the British Privy Council is carried rather further, for persons who have never been ministers, such as the High Commissioner in London, may be sworn members As in the United Kingdom, the Governor presides over formal meetings at which Orders in Council are issued, except in Canada, where he approves Orders submitted to him At meetings of the Cabinet, of course, he is never normally present, though occasionally, as in one or two cases during the war of 1914–18, the Governor may be asked to take counsel with ministers in the common cause Discussions normally do not arise over Executive Council business; anything of controversial character is explained in advance to the Governor by his Prime Minister or other minister. Ministers must, of course, to be effective, have seats in one of the Houses of Parliament, the more important as a rule having places in the Lower House, while the Upper House is normally left with a minimum of representation, and until 1929 only members of the Dail could be Executive Councillors. But in the Union and the Free State ministers may speak in either house, though voting only in that of which they are members. Except in the case of the Free State, it is not absolutely essential under the law that a minister should have a seat in Parliament; in Canada and Newfoundland it rests on convention, and even in the Union and the Commonwealth the rule is merely that a minister must either have or obtain a seat within three months.

Ministers in the Dominions have to undertake an amount of detailed work with less aid than is accorded by the Civil Service of the United Kingdom. The older system of patronage has disappeared effectively from Australasia and South Africa, where Civil or Public Service Commissions are charged with a fairly effective and impartial control of recruitment and in some cases of promotion and discipline, while pension systems, usually on a contributory system, have been introduced. Less progress has been achieved in Canada and Newfoundland In all the Dominions, however, the status of the Civil Service falls below that attained in the United Kingdom, partly through the payment of inadequate salaries and faulty methods of recruitment, partly owing to the superior attractions offered by other professional or commercial pursuits.

3. *The Parliaments*

The Dominions, though they have not successfully solved the problem of creating satisfactory second chambers, have deliberately adhered to the bicameral system It has been deemed unnecessary only in the Canadian Provinces, where Quebec alone now has a second chamber, and in Queensland, where its abolition, after being rejected by a referendum of the electorate, was somewhat irregularly carried by swamping the Upper House in 1922. The regular title of the Upper House is Legislative Council, in the federations, the Union and the Free State the title Senate is employed The Lower House in Canada is styled House of Commons, in the Commonwealth and New Zealand House of Representatives, in the Free State Dail Eireann or Chamber of Deputies, and in other cases House of Assembly or Legislative Assembly. The provincial legislatures bear this name specifically to distinguish them from the federal Parliament; in all other cases by law or usage the term Parliament is employed.

The lower houses are essentially democratic in structure. The franchise is accorded normally to all persons, male or female, of full age and not under disability, on condition of a brief period of residence and registration, and membership

of Parliament is open to those possessing the franchise. Quebec and the Union have so far resisted the demand to admit women to votes or seats. Women, however, are seldom elected, none has yet sat in the Commonwealth Parliament, one only in the Parliament of Canada, none in New Zealand; the Provinces of Canada have been more generous and women there have been ministers. Voting by ballot is universal, and preferential voting has been adopted in the Commonwealth, Victoria, Queensland, and Western Australia and to a limited extent in the Canadian Province of Alberta; New South Wales and New Zealand have tried and abandoned the second ballot; the former then resorted to proportional representation, only to reject it in favour of preferential voting with single member constituencies. Proportional representation obtains in Tasmania and the Irish Free State, and to a limited extent in the Canadian Provinces. Automatic redistribution is provided for in several cases as in Canada, the Union, the Commonwealth, and the Free State, but redistribution by special act, with the inevitable accusations of gerrymandering, is not rare. Arrangements for absent and postal voting exist, and the Commonwealth and some of the States have introduced compulsory voting, a penalty being imposed on all who refuse to vote without reasonable excuse, nor is it sufficient excuse that the elector dislikes all the candidates who are proposed. Members are paid, the highest sum being the £1,000 a year of the Commonwealth, where in addition free travelling facilities are provided. Annual sessions are provided for by law; the maximum duration of Parliament is three years in Australia and New Zealand, four years in Newfoundland and some Canadian Provinces, elsewhere five years, subject always to the right of the Governor, who acts on the advice of the Executive Council, to dissolve it earlier. He may summon and prorogue, but in the Free State the Dail fixes its own date of reassembling, and the period when its session closes.

The constitution of the Upper Houses varies. In the Dominion of Canada the Senate is nominated for life, but the number of members is limited to 96; in Quebec the tenure is

similar and the number 24; in New South Wales there is life membership without limit of number, but reconstitution of the house seems essential if it is to avoid destruction, with which it was repeatedly threatened in 1926–7. In New Zealand nomination for life yielded in 1891 to nomination for seven years; election by proportional representation was provided for in an Act of 1914, but has not yet been carried into operation In the Commonwealth, Victoria, South Australia, Western Australia, and Tasmania the Upper House is elective, the members holding office as a rule for six years, and retiring in rotation; the franchise in the States is comparatively restricted, and Councillors must be thirty years of age The Union requires age thirty; out of forty members eight are nominated, half with a view to the representation of native interests, and eight are elected in each Province by the members of the Provincial Council and the representatives of the Province in the Assembly. In the Free State, election by the people under the constitution of 1922 gave place in 1929 to election by the two houses sitting together; in it and in Australia women are eligible as members of the Upper Houses

It has been as impossible as in the United Kingdom to arrange satisfactorily the relations of the two houses The Canadian Senate cannot be swamped, though the Crown may authorize in emergency the addition of eight members. As nominations are based on political grounds, it may at times be violently opposed to an incoming Government; thus Mr. Borden's proposal in 1912 to grant 35,000,000 dollars to aid the Imperial navy was rejected by a senate mainly composed of nominees of Sir W. Laurier's régime; on the other hand, the Liberal Government from 1922 to 1929 was hampered by the Senate, which actually went so far as to assert a claim to amend or reject money bills, but in which there is now a Liberal majority! On the other hand, the Legislative Council of Nova Scotia was successfully destroyed in 1928, the Privy Council having ruled, rather unexpectedly, that the Lieutenant-General on the advice of ministers might remove and add members at pleasure That of Quebec is irremovable, but avoids conflicts with the Assembly. In Newfoundland the

addition of members to swamp the nominee house needs the authority of the Crown, but in 1917 its relations with the Lower House were successfully adjusted by the application of the terms of the Parliament Act, 1911, of the United Kingdom. In the Commonwealth, and those States which have elective Upper Houses, while the Lower House has the initiative in finance and determines accordingly the ministry, the Upper Houses claim full powers as regards ordinary legislation, and in varying degrees authority in financial matters, the only questions not usually touched being the ordinary expenditure of the year. Elaborate deadlock provisions and limitations of powers have been enacted but without much success in operation, and the Upper Houses of the States oppose solid and effective resistance to any rapid progress in the direction of State Socialism, of which Queensland, through the absence of an upper chamber, has afforded rather unfortunate instances. The Upper House of New South Wales often threatened with extinction still survives, and in 1928 amended a money bill in a manner inducing a strong protest from the Assembly, and the announcement that its financial powers would be redefined and strictly curtailed. In New Zealand the Act of 1914—so far abortive—proposes to apply the principles of the Parliament Act, 1911, to the relations of the houses; in the meantime it has been recognized, since the decision of the Imperial Government in 1892 in the dispute between Lord Glasgow and ministers, that the Upper House may be added to in order to secure harmony between it and the Lower House, while the Council normally does not interfere in matters of finance, but acts as a revising chamber. In the Union the Senate served mainly as a revising body under General Smuts; during the first Government of General Hertzog it exhibited a greater degree of independence, resulting in a modification of its constitution in 1926. As in the Commonwealth, deadlocks may be solved by joint sessions at which the superior numbers of the Lower House aid it to attain its aims. It is interesting to note that in the Irish Free State the position assigned to the Senate has been merely that of a purely revisory chamber without any powers in finance, and

in the case of other legislation with no more authority than that of delay Its abolition has been demanded by the republican elements in the Dail, but it seems clear that it does a very large amount of useful if unobtrusive revision of the rather hasty legislation sent up from the Lower House, and the Dail is willing to accept changes of this kind, the limited powers of the Senate preventing any idea of rivalry. The abolition in 1928 of the referendum, however, has further strengthened the position of the Dail as the one really legislative power, but the Senate seems to command a measure of popular support.

While the two houses are essentially representative of the whole population of the Dominions, there is a serious exception in the case of the Union. No native or Asiatic can be a member of Parliament, and the franchise is normally confined to Europeans, except in the Cape of Good Hope, in which from 1853 the rule of no colour discrimination was laid down by the Imperial Government The abolition of the native vote in this form has been decided upon by General Hertzog, who instead has determined to concede the representation of natives throughout the Union by elected Europeans in limited numbers. On the other hand, coloured persons are to be accorded the vote ultimately on the same conditions as Europeans, thus securing their union with Europeans in resisting native claims. In New Zealand, on the other hand, the Maoris are given four members in the Lower House, while three are nominated to the Council and one minister is of the Maori race or of mixed blood. There are minor restrictions on the franchise of Asiatics in Australia and Canada, but the Commonwealth of Australia as a mark of Imperial good feeling has accorded the vote to British Indians. North American Indians and Australian aboriginals are subject to disabilities as regards the franchise

The powers of the Dominion Parliaments are extremely wide, though it is not yet literally true, as claimed in Article 12 of the Free State constitution, that the sole and exclusive power of making laws for the peace, order, and good government of any Dominion is vested in the Parliament of that

Dominion. The Parliaments in fact, with the exception of that of Newfoundland, which was created in 1832 under the royal prerogative, are erected by the Imperial Parliament. But they are not in any sense delegates of that body and are, therefore, not hampered by the rule of law which forbids a delegate to devolve his duties upon another. In the case of the federations there is necessarily an important restriction on both federal and local authority in the division of powers, but each legislature is supreme within its ambit. It is the sole authority to decide what ends it shall seek to achieve and the methods to be followed. It is absolutely free to discard British modes of procedure and to experiment in any way it thinks fit. It can exclude any British subject from its territory; it can deport a British subject if he fails to be able to support himself, however innocent his misfortune; it can confiscate private property without paying compensation, for moral laws have no binding force on the legislatures. Though the prerogative as to currency is denied to the Governor, the legislatures can freely regulate currency, and decide whether and on what terms British currency can be accepted. They could create titles of honour for local use, as suggested in the Irish Free State, they could forbid the use locally of British titles if they thought it necessary They could legalize in time of war trading with the enemy so far as it took place within their limits.

There remain, however, certain restrictions on their authority which flow directly from the fact that the Dominions are not fully sovereign States in the eyes of British constitutional law as it stands at present. In the first place, Dominion legislative power applies only to the Dominion and its territorial waters, except in so far as a wider power is conferred by an Imperial Act. Thus a Dominion legislature cannot normally penalize bigamy or murder committed beyond Dominion limits; nor are Dominion laws in force on vessels on the high seas. But the inconvenience of this rule is modified by Imperial enactments. Thus the Dominions have, under the acts regulating the army and the air force, power to control their armies and air forces beyond their territorial limits, and

Similarly an Act of 1911 provides for Dominion control of naval forces. Dominions can regulate their coasting trade under s. 736 of the Merchant Shipping Act, 1894, and legislate for vessels registered therein under s 735, subject in both cases to Imperial approval. The laws of the Commonwealth are in force on all British ships, other than those of the royal navy, whose first port of clearance and port of destination are in the Commonwealth. A wider power of legislation is now asserted by the Canadian Government, which claims the power to regulate Canadian ships beyond territorial limits, but it seems that a real extension of authority must await Imperial legislation. The Conference of 1926 was unable to recommend any definite action, but advocated inquiry by a Committee into 'the practicability and most convenient method of giving effect to the principle that each Dominion Parliament should have power to give extra-territorial operation to its legislation in all cases where such operation is ancillary to provisions for the peace, order and good government of the Dominion'. It is clear that grave difficulties would arise if each Dominion legislated for all British subjects, and that its powers should be confined to British subjects essentially connected with it by birth therein or residence

Secondly, no Dominion can legislate in a manner incompatible with its membership of the British Empire. It cannot declare war or neutrality or conclude peace, for these are powers still reserved to the King in person It cannot legislate to break the tie between the Dominion and the Crown by declaring the secession of the Dominion, for that would be to transgress the purpose for which it exists. Nor, thirdly, may it legislate so as to override Imperial legislation which is applicable to the Dominion, unless, of course such action is authorized by some Imperial Act, as in the case of registered shipping, or the power given in 1922 to the Irish Free State to provide for the application to it of such acts as the Copyright Act, 1911, or the British Nationality and Status of Aliens Act, 1914, which make special provisions for the Dominions. This rule is expressly laid down by the Colonial

Laws Validity Act, 1865, which was enacted to remove doubts as to the power of colonial legislatures to depart from the principles of English law, and which provided that colonial laws should be void only in so far as they were repugnant to provisions of Acts of the Imperial Parliament, or having the force of Acts, which were applicable to the colonies. The application may be express or may be necessarily implied, as in the case of the general provisions of the British Nationality and Status of Aliens Acts The Act of 1865 forms the basis of the supremacy of the constitutions of the Dominions, and, though the framers of the Commonwealth Constitution suggested that its application to the Commonwealth should be reconsidered, no doubt has ever existed of its paramount force The Imperial Conference of 1926 was unable to recommend its abrogation, and instead referred to a Committee to consider its principles and the extent to which any of its provisions ought to be repealed, amended, or modified in the light of the relations existing between the members of the British Commonwealth of Nations It must, however, be remembered that Imperial legislation for the Dominions is now never passed save with their consent and normally at their request, as recognized by the Conference, and that, therefore, the restriction is of minor importance save as regards merchant shipping.

The privileges and the procedure of Dominion Parliaments are based very closely on British usage; though, under the influence of Labour Governments, in some cases the formalities of British procedure have been simplified, it has nevertheless been remembered that a measure of solemnity becomes the conduct of the legislative power and facilitates the conduct of business. The necessity of the closure has been gradually realized and the introduction of rules for limitation of the length of speeches has steadily progressed. The office of Speaker has failed, on the whole, to achieve the prestige belonging to it in the United Kingdom. The Speaker in some instances has acted as an active partisan, and there is no usage requiring that he be normally re-elected without a contest, though this was enacted in 1927 in the Irish Free State

but by a purely party vote to serve the interests of the Government

As in the United Kingdom the growth of responsible government has been possible only under the party system, the emergence of which in Canada from 1840 was the indispensable prelude to the taking over of power from the Governor's hands. Doubtless the distinctions between parties are often evanescent and personalities rather than principles govern, but the same rule can be noted in the United Kingdom, and the rise to power of Labour parties has brought into being more definitely conflicts of principle. Canada is still divided between Conservatives and Liberals, though war pressure induced a temporary coalition of some of the latter with Sir R. Borden to carry out conscription for oversea service; the Farmers' movement which, after the war, seemed to promise a definite realignment of political parties has gradually faded away save in the western provinces In the Provinces the same divisions prevail, though local issues also count, recent events show a distinct Conservative revival, but Quebec remains loyal to Liberalism, which finds it possible to accommodate itself to the intensely Conservative nature of the French Canadians. In Newfoundland personalities alone count, save when a rumour is raised of intrigue to induce the island to unite with Canada, a proposal which is bitterly opposed by a majority of the electorate, who value their independent status and believe that their material interests could not be entrusted to the Dominion Religious differences have also some weight, as in Australia. In the Commonwealth the three party system, in which Labour usually supported the party of protection against the remnant of free trade advocates from New South Wales, gradually broke down, and the Labour leader, Mr. Hughes, during the war effected the construction of a National Government confronting the extreme Labour elements who were lukewarm in prosecution of the war Since his fall from power in 1923 the Nationalist party has been weakened by the emergence of a Country party bent on securing the interests of the farming community and pastoralists as against the industrial and com-

mercial concerns of the cities A similar phenomenon may be noted in the States, where Labour is opposed by more or less effective coalitions, whose operations are hampered by this divergence of outlook. New Zealand remained faithful to Liberalism from 1891 to 1912, it showed then equal devotion to a Reform party under first Mr. Massey and then Mr. Coates, with an interval of coalition in the war from 1915 to 1918, until the close of 1928, when it unexpectedly restored Sir J. Ward to power at the head of a coalition of Liberals and Labour. In the Union the skill of General Botha and of General Smuts maintained in power the South African party as against the Nationalist party of extreme Dutch views under General Hertzog, the small Labour party representing the white mineworkers, British and Dutch, and the Unionists, who stood for the interests of the British middle-class in the Union. The rise and development of republican propaganda under General Hertzog, however, resulted in 1920 in a policy of rapprochement, under which eventually the Unionists merged their identity in the South African party in order to make head against secession and to promote immigration. In 1924, however, General Smuts suffered defeat and General Hertzog acquired power, which was confirmed at the election of 1929. The Labour party, which had broken in two shortly before on the issue of continued co-operation with the Government, was almost annihilated, but, though the towns showed a strong support for General Smuts, the Boers of the country districts voted solidly for the Nationalists, whose position had been strengthened by successful finance, the enunciation of a policy of segregation and strict repression of the natives to prevent encroachment on European rights, and the recognition of the autonomous status of the Dominions at the Imperial Conference of 1926. The Irish Free State has seen, in the first place, the spectacle of a large minority of the Dail refusing to take their seats because of their repugnance to the oath of allegiance prescribed in the constitution, followed in 1927 by their compulsion to enter the Dail in order to prevent the misuse of power by their opponents. The present state of affairs shows the Government with a narrow majority

over the opposition, and the Republicans organized as an effective party, which has already secured a very marked improvement in administrative and legislative methods.

Party organization is based on British lines, but the lack of power to raise funds by the sale of honours prevents the existence of the great party funds and limits the possibility of careful preparations. The Labour party with its voluntary workers is, therefore, very strong. Moreover, it normally rests on a full organization, as in the case of Australia, where the policy of the Commonwealth and State parties is definitely produced by formal Labour Conferences of duly elected representatives of local Labour bodies. Party policy in Parliament is determined on the basis of these Conference resolutions by the Labour members in caucus, with the result that the Labour members co-operate very closely with one another. In some cases the result is doubtless unfortunate. Instead of matters being freely decided by Parliament, after full discussion, on a basis of give and take, the decision is taken in accordance with the views of some outside body, and Labour Governments have to decline to accept amendments which in themselves are obviously sound. On the other hand, the strict observance of party discipline, enforced by payment of members and by the rule that any Labour supporter who does not vote as the caucus decides must resign his seat, results in making the Labour parties extremely effective in carrying out their policy. The other side of the position is revealed in the ejection from office in 1929 of the Labour Government in Queensland, the people of the State having realized that Labour policy had brought about grave economic difficulties and that serious scandals had occurred in matters of administration. The same features marked the administration of New South Wales under Labour auspices in the period 1925–7; the new Government formed in October 1927 after the defeat of Labour at the general election found it necessary to take drastic action with regard to the municipal government of Sydney as well as in other matters derogatory to the standing and value of Parliament as a deliberative body. The fundamental error lies doubtless in insistence on the view

that a Labour member is nothing more than an agent to carry out the policy of the organization which works for his election, and has no obligations or duties towards the other interests either in his constituency or in the State.

4. *The Judiciary*

The judges of the Dominions have a special burden imposed upon them beyond those incumbent on their brethren in the United Kingdom. It falls to them to pronounce on the validity of Dominion enactments, when it is questioned whether or not they are within the powers of the Parliament. In the United Kingdom an Act cannot be invalid, and all that a judge may do is to interpret it. In the Dominions, and in special in the federations, an Act may be invalid in whole or part because it exceeds the powers of Parliament, as when a federal Act impinges on a provincial sphere, or Commonwealth and State Acts come into collision, or a Dominion contravenes the provisions of the Merchant Shipping Acts, or seeks, as did Canada, to forbid the Privy Council to entertain appeals in criminal matters despite the express power to hear any appeals given by the Judicial Committee Act, 1844. The success of Dominion judges in these difficult fields has been remarkable. Less complete has been their achievement in the efforts, especially in Australia and New Zealand, to deal judicially with questions of conciliation and arbitration in industrial disputes. These issues lend themselves with difficulty to judicial handling, but, after a prolonged series of experiments, the Commonwealth Government was defeated in October 1929 because of its determination to retire from the field of industrial arbitration, save in certain cases such as those of inter-state shipping and dockworkers.

It is, of course, recognized fully in the Dominions that judges must be assured security of tenure if they are to be effectively impartial, and the general rule has been adopted as regards Supreme Court judges that they shall hold office for life or until a specified age, subject only to removal by the Crown or the Governor on addresses from both Houses of Parliament, which would, and in some cases by law must,

allege proved misconduct in office as the ground of removal It is characteristic of Labour rule in Queensland that it violated this sound principle and conferred the status of a Supreme Court judge on the President of the Industrial Court, despite his temporary tenure of office and his virtual dependence on the executive. The legality of the appointment was affirmed by the Privy Council, but there can be no doubt of its improvidence. It must be regretted also that judicial salaries are often too low to attract the highest legal talent, and that those lawyers who do accept judicial office must often do so with even greater relative sacrifices than is the case in the United Kingdom. The doctrine of the election and recall of judges has figured in Labour party programmes in Australia and Canada, but no serious progress has yet been made by either dogma

The independence of the higher courts renders satisfactory their control of the lower courts, which are provided on a generous scale in the Dominions, and whose judges hold office by a less secure tenure. Moreover, the subject is granted in certain matters a means of redress against the executive Government which is not yet accorded in England. Claims against the Government in contract are normally matters which can be dealt with by the courts without the difficulties interposed by the procedure of petition of right, and in a number of cases proceedings in tort are also available against government departments, and not as in England merely against the individual wrongdoer from whom no effective redress may be recoverable. The extent to which Dominion Governments enter into commercial transactions as part of their governmental activities renders this easy access to the courts of special value. A further safeguard for impartial justice is afforded by the existence of the right of appeal from Dominion Courts to the Privy Council, which, as a remnant of Imperial control, will be discussed below.

5. *Dominion Nationality*

The people of the Dominions owe, like those of the rest of the Empire, allegiance to the Crown, and possess internationally

as well as constitutionally the status of British subjects British nationality, therefore, is now regulated by Imperial legislation, framed after concurrence has been obtained from the Dominion Governments, and the terms of the Imperial acts are normally re-enacted by the Dominions, a process convenient if unnecessary in strict law For reasons connected, as will be explained later, with the Dominion membership of the Permanent Court of International Justice, Canada in 1921 decided to define Canadian nationals as a specific class of British subjects The definition grants Canadian nationality to any British subject born in Canada, or domiciled in Canada, or naturalized in Canada and domiciled there; to the wife of any such person, and to the child of a father who was a Canadian national at the time of the child's birth or possessed the qualifications now necessary for Canadian nationality. This example was followed by the Union of South Africa in the Union Nationality and Flags Act of 1927; it defines Union nationals as persons born in the Union who are not aliens; British subjects who have been domiciled for two years in the Union, persons naturalized in the Union and domiciled there for three years; and children of Union nationals, and their wives In both cases Dominion nationality can be lost on acquisition of another Dominion nationality, or of nationality of the United Kingdom, a status not yet created nor likely to come into being. But neither Dominion differentiates in regard to political rights between their nationals and British subjects generally There is a very different policy in the Irish Free State; citizenship is conferred by the constitution on all persons resident in the area on 6 December 1922, born in Ireland, or either of whose parents was born in Ireland, or who have been ordinarily resident in the Irish Free State for seven years. Political privileges are accorded only to citizens, thus marking them off from the rest of the category of British subjects, and it is not surprising that exception has been taken in the United Kingdom to a differentiation which is not practised against Irish Free State citizens who come in large numbers to settle in Scotland or England.

It is uncertain what importance attaches to this development, the distinction may prove to be useful in connexion with the proposal to extend the extra-territorial authority of the Dominion Parliaments, for they could be authorized to legislate for their nationals when outside their boundaries. But it must be noted that, as will be seen later, as British subjects nationals of the Dominion enjoy important treaty rights, and that insistence on their distinct nationality might result in the withdrawal of these advantages. The British Courts have so far refused to recognize that there are any true nationalities within the Empire, and have stressed the essential fact that all are British subjects owing a common allegiance to the same sovereign.

CHAPTER II

THE FEDERATIONS

FEDERATION in Canada and Australia alike owed much to the American model, but the circumstances which brought about the federal movement in the two cases differed considerably and produced divergent tendencies Sir John Macdonald and his confreres were driven to federation by the deadlock which paralysed government in the province of Canada, by the realization that only thus could North America acquire the western lands which else might be taken possession of by the United States, and by dread of annexation by that great power which had just emerged in formidable military strength from the war of secession This war had arisen in their view largely because the central power in the federation had been too weak, and their aim was rather unity than a true federation, though the demands of the provinces compelled them to concede the latter. On the other hand, Australia was comparatively free from fear of foreign aggression, though some weight must be allowed to the emergence in 1894–5 of a great power in the east, which must naturally be anxious to secure access for its excess population to the lands which the Australians so jealously guarded from access by oriental peoples. Considerations of economic advantage played a part in the case of Canada; they were more strongly present in that of Australia, while the homogeneity in race of the population encouraged the feeling that the maintenance of artificial frontiers with distinct customs systems was irrational and extravagant. It was, however, a difficult matter in the absence of any overmastering motive to induce union, and those who framed the constitution were, moreover, profound admirers of the merits of the American constitution and no admirers of centralization of power (Hence the Commonwealth constitution is based, not on the desire as far as possible to unify, but rather on the granting to the States the retention of the maximum of authority compatible with the creation of a unity in any sense.)

Hence it resulted that the Canadian constitution of 1867 treats the Dominion as the one Government in direct relation with the Imperial Government. The provinces are shut off from direct access to the British Government, the Lieutenant-Governors are appointed by the Governor-General on the advice of his ministers, and may be removed by the same authority, as has been done in several cases. Provincial Acts again are subject to disallowance by the Dominion and not by the Imperial Government. In the allocation of powers between the Dominion and the Provinces the whole residuary power is granted to the former and not to the latter. In this sense it is possible to argue, as did Lord Haldane, that Canada is not a true federation, for the Provinces did not retain their old authority, subject to the surrender of a part to the federation, but a new grant was made to the Provinces of what was deemed not to be required by the Dominion. In London again the High Commissioner speaks for Canada, and the Agents-General for the Provinces are not in direct relations with the Dominions Office. In the case of Australia, on the other hand, the States remain in direct communication with the Imperial Government, by whose advice the King appoints and recalls their Governors, who owe no obedience to the Commonwealth Government or the Governor-General. The laws of the States cannot be disallowed by the Commonwealth Government, and the powers of the States as they existed before federation are retained, subject only to the handing over of exclusive power to legislate on matters of fundamental importance to the Commonwealth and of concurrent but paramount power to deal with certain other issues of general character. So again in London the Agents-General of the States have direct access to the Dominions Office as well as has the High Commissioner for the Commonwealth. It is, however, important not to exaggerate the differences between the two cases, though they are both real and important. The Lieutenant-Governors of the Provinces, who were in the view of Sir John Macdonald mere federal officers, have been ruled by the Privy Council to represent the Crown, and to exercise the royal prerogative of administration in as

full a measure as any Governor of an Australian State. The legislative field of the Provinces in like manner has been held to be far more extensive than Sir J. Macdonald intended it to be, while, on the other hand, the powers of the Commonwealth by recent interpretations of the constitution have turned out to be considerably more extensive than the mere wording of the constitution or the intentions of its framers would suggest. Again, the Imperial Government has insisted that on all matters which can be regarded as involving external relations the Commonwealth is the authority with which it will primarily deal, though this contention is not admitted by the States, which have also vainly endeavoured to secure admission as members of the Imperial Conference on the score that many of the matters dealt with by that body affect issues on which they alone have legislative and administrative authority.

The British North America Act, 1867, confers on the Dominion exclusive powers in all matters not expressly assigned to the Provinces, and, without prejudice to this plenitude of authority, accords to it the sole right to legislate regarding military and naval defence, the postal service, the census and statistics, navigation and shipping, beacons, buoys, and lighthouses, quarantine and the establishment of maritime hospitals, sea coast and inland fisheries, interprovincial and international ferries, currency, banking, bills of exchange, interest, legal tender, weights and measures, patents, copyright, bankruptcy, marriage and divorce, the criminal law, including procedure but excluding the constitution of courts, naturalization and aliens, Indians and the lands reserved for their use. It may also regulate railways and other works extending beyond provincial limits, steamship lines connecting a province with any other place, and any local works which the Parliament may declare to be for the general advantage of Canada or of any two or more Provinces; it will be noted that the Parliament has an unfettered discretion to make such a declaration, and may thus seriously intrude on Provincial authority. It has also an unfettered power of taxation and of raising loans and of managing its own

property, and it may legislate as to trade and commerce. This wide power, however, has been drastically cut down by legal decisions, which have completely altered the purpose of the framers of the constitution. The power can be resorted to only for important political purposes such as regulation of the trade in arms and to some extent control of the trade in liquor. Immigration and agriculture fall under the authority of both the Dominion and the Provinces, but Dominion legislation prevails The Dominion again has the power of legislating to carry out any treaty between the Empire and a foreign power, in so far as it imposes duties on Canada or any province. It is a moot question how far by use of the treaty power the Dominion can invade the provincial sphere; the better opinion holds that in incidental matters it may thus legislate, but that it cannot fundamentally alter the constitutional distribution of powers by this indirect method Thus it cannot deprive the Provinces of control of water power for generating electricity or ownership of the bed of the St. Lawrence merely by entering into a treaty with the United States.

To the Provinces are assigned exclusive powers to deal with property and civil rights, the solemnization of marriage, the incorporation of companies with provincial objects, municipal institutions, the control of public lands belonging to the Province, the establishment and maintenance of prisons, hospitals, asylums, and other charities and local works and undertakings All matters of merely local or private nature fall within the power of the Provinces, together with the administration of justice, including the constitution of courts, criminal and civil, and civil procedure. They may impose direct taxation and shop, saloon, tavern, auctioneer, and other licences with a view to raising revenue for Provincial, local, or municipal purposes, and they may borrow on the security of the Province. Fine, penalty, or imprisonment may be provided for any breach of an enactment within their authority, and this power includes the right to remit penalties, though the Governor-General alone has a delegation of the prerogative of mercy, which Sir J. Macdonald could not induce the Imperial Government to entrust to the Lieutenant-

Governors Education is in the control of the Provinces, but no law may affect prejudicially any right or privilege with respect to denominational schools enjoyed by any class of persons at the date of entry of the Province into the Dominion; moreover, when any system of separate schools existed at the union, or has since been created, an appeal lies to the Dominion Government from any act or decision of a Provincial authority, including the legislature, affecting any right or privilege of a Protestant or Roman Catholic minority; if the Dominion Government recommends remedial action by the Province, and it is not carried out, the Dominion Parliament may legislate to enforce the view of the Government. This power, however, by impinging on Provincial authority, resulted, when it was attempted to coerce Manitoba in the period 1891–6, in the overthrow of the Conservative Government. The privilege is one as to religious teaching, not the use of the French language; but in the Dominion Parliament and Courts and in Quebec that language is on a footing of equality with English as the official language of Canada. The distribution of subjects between the Dominions and Provinces is absolutely unalterable by either authority; the Canadian constitution can be altered save in minor detail only by the Imperial Parliament, which acts on the wishes of the Dominion and Provinces, and no change in the matter of powers has yet been agreed on. The interpretation of the constitution is, therefore, a matter of the highest importance. The fathers of federation so little appreciated the complexity of the position that they thought it unnecessary to do more than create the possibility of establishing a Supreme Court, a step taken in 1875 The result is that appeals can be brought direct from the final courts of appeal in the provinces to the Privy Council or to the Supreme Court of Canada, from which in important cases a further appeal may be permitted by the Privy Council to itself. In all vital issues the decision of that body is always taken. The task of interpretation has been very difficult, and many matters are left in grave confusion. The truth is that a constitution framed in the primitive social and economic conditions of 1867 is not adapted for

present-day conditions, and on certain topics, for instance the control of companies, and of the development of electricity by the use of the waters of navigable rivers, it is impossible to ascertain the extent of Dominion or Provincial authority

In matters of finance the sources of revenue of the Provinces are inadequate, and accordingly Dominion subsidies are accorded, but are claimed still to be insufficient; special provision was made in 1928 for the Maritime Provinces, which have suffered from federation Manitoba, Alberta, and Saskatchewan have been promised the grant to them of their lands, which have hitherto been administered by the Dominion The Provinces resent also the power of disallowance of their legislation vested in the Dominion, but it has been very rarely exercised, and any change in the present status is feared by Quebec, which finds in it security for her religion, and her language. It has also been suggested that the constitution and powers of the Senate should be reconsidered, for, though its 96 members represent equally the great divisions, Ontario, Quebec, the Maritime Provinces and the Western Provinces, it cannot be said that it acts in any measure as an effective safeguard for provincial claims, for its members are normally drawn from federal politicians with no special interest in Provincial as against federal rights

In Australia the Commonwealth has power over the postal service, the census and statistics, lighthouses, lightships, beacons and buoys, quarantine, fisheries in Australian waters beyond territorial limits, astronomical and meteorological observations, currency, legal tender, banking (other than State banking not extending beyond the limits of the State), bills of exchange, weights and measures, patents, copyright, bankruptcy, insurance (other than State insurance confined to State limits), foreign corporations and trading or financial corporations formed within the limits of the Commonwealth, marriage and divorce, invalid and old age pensions, naturalization and aliens, immigration and emigration, the influx of criminals, the control of railways with respect to military and naval transport, the acquisition on just terms of property from any State, and, subject to the consent of the State con-

cerned, the acquisition or construction of railways in a State. It may also legislate for the people of any race (other than the aborigines of any State), for whom special legislation is requisite, for the relations of the Commonwealth with the islands of the Pacific and for external affairs, a term of vague character, which is deemed not to give to the Commonwealth the power on the plea of treaty negotiation to infringe the sphere of the States. The Commonwealth has full power to regulate foreign and inter-state trade and commerce, but not internal trade in any State; it may provide for conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State, a power to which the courts have given the widest interpretation, according the Commonwealth Court of Conciliation and Arbitration authority over all but extremely local disputes. The Commonwealth can indirectly affect trade by its exclusive power to impose customs and excise duties, and by its right to grant bounties which, save in the case of metals, the States may only grant with the approval of the Commonwealth. The Commonwealth has also a general power of taxation, but may not discriminate between States or parts of States It controls the military, air, and naval forces of Australia, the States being forbidden to maintain such forces save with its assent, which in practice is not accorded. The Commonwealth may not accord preferential treatment to any State by any law regarding revenue, trade, or commerce, nor deprive any State of the reasonable use of its waters for conservation or navigation, nor may it legislate as to religion. The States may not coin money, nor may they make anything but gold or silver legal tender, nor may they discriminate between their own citizens and those of other States, nor interfere with the complete freedom of commerce between the States. Preferential rates granted on State railways may be forbidden by the Commonwealth Parliament if held unreasonable by the Inter-State Commission, for which provision is made in the constitution, but which has ceased to function. The property of the Commonwealth and the States is, as in the case of Canada, exempt from taxation by the other. The

States retain every power not expressly granted exclusively to the Commonwealth, but, where the Commonwealth and the State have both legislative power, the State Act yields in case of conflict to that of the Commonwealth The States may also confer legislative power in matters otherwise reserved to them upon the Commonwealth, a power not included in the Canadian constitution. They have also power to alter their own constitutions, but not to disturb the distribution of federal and State power. The Commonwealth, unlike Canada, has constituent authority which would extend to such alteration, but precautions attend its exercise. The mode of procedure requires a referendum to be held after a Bill has passed both Houses by absolute majorities, or, having passed one house, is rejected twice by the other To become law the Bill must be approved at the referendum by a majority of States and of voters, nor can any provisions especially affecting a State become effective unless approved by a majority of voters in that State.

The interpretation of the constitution was deliberately reserved to the High Court of the Commonwealth, which was provided for in the constitution, and to which its framers determined to secure control over the development of their handiwork. The Imperial Government reluctantly yielded, the final compromise being that appeals should only be brought to the Privy Council from decisions of the High Court on matters respecting the relations of the Commonwealth and the States, or of the States *inter se*, on a certificate from the High Court. The Court deems that such a certificate should rarely if ever be given, and the interpretation of the constitution has essentially been carried out by the High Court. Originally manned by strong admirers of the American constitution, the Court read into the constitution the doctrine that neither the Commonwealth nor the States could exercise their legal authority so as to infringe the sphere in principle appropriate to the other. This doctrine has since 1920 been abandoned, and it is now admitted that both authorities can legislate freely on matters within their power, subject to the rule that the law of the Commonwealth over-

rides a conflicting law of the State in matters which fall under the authority of both Moreover, during the war the Court interpreted the Commonwealth power in the widest sense, permitting it to regulate the price of food and to limit most drastically individual liberty. Even so, it is the conviction not merely of the Labour party, which would prefer to establish a unitary Government with local councils in place of States, but of many other politicians, that the powers of the Commonwealth are inadequate, and that there is serious overlapping in matters relating to labour and industrial and commercial conditions. Repeated efforts have been made to induce the people to entrust to the Commonwealth power to regulate internal trade and commerce and labour conditions in general, to control corporations of every kind, to regulate monopolies, and, where necessary, to expropriate and carry on the business concerned for the public interest. But all these efforts have been defeated, and the latest development is the defeat of Mr. Bruce's proposal, on the refusal of the States to surrender any powers, to reduce to a minimum the Commonwealth operations in respect of trade disputes. This course had been dictated by the chaos resulting from the existence side by side of two sets of authorities regulating industrial conditions, on the one hand, the Commonwealth Court by means of its awards regulating hours and wages, and, on the other, States Wage Boards and industrial tribunals prescribing conditions.

Financial relations have also disturbed the harmony between the Commonwealth and the States In return for their sacrifice of customs and excise as sources of revenue, the States received at first three-quarters of the surplus of these imposts, and then from 1911 subsidies at the rate of 25*s.* a head. This arrangement was changed in 1928–9 by the Commonwealth which arranged in lieu to take over the debts of the States and to pay subsidies to certain States which had suffered especially. A comprehensive adjustment of financial relations remains a desideratum no less than in the case of Canada, nor is there any doubt that South Australia, Western Australia, and Tasmania have suffered rather than gained

economically from federation As in Canada, the Senate has completely failed to serve any federal purpose. Its members represent to the number of six each the States, but, as they are elected to the number of three triennially by the States, each as one electorate, on the same franchise as the Lower House, the result has been that they seldom, if ever, display any tendency to support State rights against Commonwealth inroads, the only sign of their State affiliations lying in the effort to secure the maximum benefit from federal funds for their constituents.

CHAPTER III

THE SOVEREIGNTY OF THE UNITED KINGDOM

THE British Constitution has as its most characteristic feature the fact that its forms and its spirit have come by usage to differ more and more essentially, so that there is the widest divorce between theoretical and real power. In the same way the sovereign authority of the United Kingdom in respect of the Dominions stands in law unquestioned, but, long before the fact was formally recognized by the Imperial Conference of 1926, the real element of subordination had been attenuated almost to nothingness. The assertion by the Conference of the absolute autonomy of the Dominions must, it is true, be regarded as a programme rather than a statement of fact. Legislation will be essential before the ideal is achieved, and the fact that the Conference itself had to refer the question of the nature of the action to be taken to a Committee indicates the complexity of the subject. Moreover, the deliberations of that Committee, which was not actually summoned until October 1929, were necessarily subject first to ratification by the Imperial Conference itself and then to approval and action by the Parliaments of the Empire.

As matters stand the Imperial Government has long ceased to exercise any control over the executive Government of the Dominions. Long before the Imperial Conference of 1926 declared that the Governors-General were not agents of the Imperial Government, they had in fact, as Mr. Hughes insists, become nothing but representatives of the Crown, through whose hands communications from the Imperial Government passed as a matter of convenience. In fact a Governor-General never could act on Imperial instructions in executive matters without ministerial approval. In strict theory he might have dismissed his ministers and filled the Executive Council with his nominees, but he would have been powerless to obtain supplies from Parliament. Where Im-

perial interests were involved, his only course was to induce ministers to support a line of action in the sense desired by the Imperial Government, and even to-day a Governor-General in touch with Imperial policy could quite properly point out to ministers the advantages of action in harmony with the best interests of the Empire.

Over the legislation of the Dominion the Imperial Government still possesses in law very extensive powers which it could, if it desired, use with full legal effect. No Dominion Bill can become law without the assent of the Governor, and this assent may be withheld on instructions from the Crown. The refusal of assent is indeed now obsolete, but in lieu Governors may be required to reserve Bills for the consideration of the Imperial Government, and in such cases the Bill drops unless assent is given by Order in Council within a period of one or two years There is available as an alternative the passing of an Act with a clause suspending its operation until the assent of the Crown is proclaimed, in which event the Act takes no effect until it has the approval of the Imperial Government. The power to reserve Bills is included in every Dominion constitution granted by Parliament, and in certain cases there are legislative provisions which require that certain classes of Bills shall be reserved; in these cases assent is a mere nullity and gives the Bill so assented to by the Governor no legal validity Thus in the Commonwealth of Australia any Bill to limit appeals to the Privy Council must be reserved, and there is a similar provision in the Union constitution. In the Union it is also necessary to reserve any Bill repealing or amending the provisions of the South Africa Act, 1909, respecting the House of Assembly or abolishing or abridging the powers of Provincial Councils. In New Zealand Bills altering the Governor-General's salary or the sum provided in the constitution for native affairs must be reserved. In the Australian States under the Australian States Constitution Act, 1907, every Bill must be reserved which alters the constitution of the legislature of the State, or of either house, or which affects the salary of the Governor, unless prior authority to assent has been obtained by the

Governor in order to avoid loss of time. Dominion Bills under the Colonial Courts of Admiralty Act, 1890, must be reserved, unless they contain a suspending clause or the assent of the Imperial Government to legislation has been secured in advance. Dominion measures regulating the coasting trade under s. 736 of the Merchant Shipping Act, 1894, must contain a suspending clause, while those under s. 735, dealing with shipping registered in the Dominions, must be confirmed by Order in Council; both classes of Bills are normally reserved. Detailed instructions as to the reservation of classes of Bills are still given to the Governors of the States of Australia, and Newfoundland, while the Governor-General of the Union was required specially to reserve any Bill abolishing the native franchise in the Cape of Good Hope. Within the sphere of Bills to be reserved fall those gravely affecting the prerogative, the interests of British subjects resident outside the Dominion, or British shipping, or running counter to treaty obligations Even, however, if a Bill is assented to by a Governor, it is legal for the Crown to disallow it, usually within a period of one or two years.

These wide authorities have in practice gradually ceased to form a serious element in Dominion relations, but they long served to secure Imperial control. The differential duties were forbidden to the Australian colonies, and only permitted *inter se* in 1873, while a general relaxation was accorded as late as 1895. Canada was prohibited until 1911 from legislating at her own will as to copyright despite the repeated protests on constitutional grounds of her Governments Currency was long controlled, and merchant shipping legislation remains in this condition. The Imperial Government long hampered more generous divorce laws and prohibited the marriage of men with their deceased wives' sisters. But in 1920 the Secretary of State for the Colonies refused to disallow two Queensland Acts repudiating in part contractual obligations held by non-residents. The suspicions thus aroused in the City of London secured the cessation of lending to the State, until it repented and made such amends to those affected, that London borrowing again became possible. Admission, how-

ever, of Dominion or State stocks to trustee rank is still dependent on conditions one of which provides that the Government must record its view that legislation injuriously affecting the security offered would properly be disallowed. The power to control legislation has been effectively used to secure that *nominatim* exclusion of Asiatics from the Dominions has been eschewed, the same result being achieved in the main by linguistic tests manipulated to defeat any would-be immigrant. Accord with treaty rights has thus been enforced; the only Commonwealth Bill which has been reserved, and never assented to, was one of 1906 offering to the United Kingdom a preference dependent on importation in British ships manned by white labour The measure offended alike foreign treaty rights and Imperial sentiment, and was not pressed after discussion at the Colonial Conference of 1907 A New Zealand Bill of 1910, which was intended to exclude Asiatics from any participation in shipping trade with the Dominion, was similarly never allowed to become operative for grounds made clear at the Imperial Conference of 1911. But, apart from the fact that some Bills have never become operative, it must be noted that amendments have often been secured in measures by knowledge of the fact that, if they were not altered, they could not be allowed to stand, and the existence of the Imperial power must not be valued merely by the number of times it has formally resulted in the failure of legislation. The Irish Free State constitution recognizes, however reluctantly, the right to reserve, though it omits the power to disallow, probably because that had already by 1922 become obsolete in practice as compared with reservation, it being obviously far better to prevent an objectionable measure ever becoming law than to interfere with it after it had become operative and rights had been duly acquired under it

The issues of disallowance and reservation proved too complex for final disposal by the Imperial Conference of 1926, which contented itself with relegation of further consideration to a Committee, confining itself to the enunciation of the principle that 'apart from provisions embodied in constitutions, or in specific statutes expressly providing for

reservation, it is recognized that it is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs. Consequently it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in Great Britain appertaining to the affairs of a Dominion against the views of the Government of that Dominion' It was suggested that, where legislation in one part of the Empire might affect other parts, the appropriate method of procedure was prior consultation between the Governments concerned. The resolution, which, of course, refers only to the Dominions proper, and has no application to the States, is rendered extremely obscure by the reservation made in the opening sentence—which is normally omitted when it is cited. It appears, however, from the announcement made by Mr Baldwin immediately after the Conference, and from the doctrine laid down by Sir F. Bell in the New Zealand Legislative Council, that in matters of reservation of Bills the Conference made no change in the existing rules. The Governors-General are still bound to reserve, as is indeed clear in law, and on these matters they report direct to the Imperial Government, with which lies the duty of advising the Crown as to the issue of the necessary Orders in Council conveying assent. 'Needless to say, under modern conditions the advice of the Imperial Government will, in almost any conceivable case, be in accord with the wishes of the Dominion; were a cause of grave difference of view to arise, the issue would doubtless be deferred until it had been considered in conference by the whole of the Governments of the Dominions Where Bills are not reserved no question of tendering advice to the Crown in regard to them now arises, for by the advice of the Imperial Conference the Imperial Government abandoned the wholly needless practice of formally intimating each year to the Dominions that their legislation would not be disallowed.

The Imperial Parliament, as distinct from the Government, has no power of disallowance of Dominion legislation. But it possesses, as was reasserted in 1922 in connexion with the constitution of the Irish Free State, the power to legislate for

the whole Empire, though the class of cases in which such action is taken is restricted As the Imperial Conference of 1926 recorded, 'the constitutional practice is that legislation by the Parliament at Westminster applying to a Dominion would only be passed with the consent of the Dominion concerned.' Such legislation is normally concerned with matters of general Imperial application, involving in some cases the application of extra-territorial authority. Thus the rendition of fugitive offenders to foreign countries by extradition procedure, and to other parts of the Empire, is carried out under Imperial legislation, the Extradition Acts, 1870 and 1873, and the Fugitive Offenders Act, 1881, to avoid the possibility of doubts arising as to the legality of detention in transit The control of the actions of British subjects outside the British Dominions, especially in places where the Crown exercises extra-territorial jurisdiction, such as China, Abyssinia, or Muscat, is exercised by Orders in Council under the Foreign Jurisdiction Act, 1890. The control of the actions of British subjects when the Crown is neutral is enforced by penalties under the Foreign Enlistment Act, 1870. Similarly the Imperial Parliament controls the field of affairs reserved from Dominion control, such as prize jurisdiction, and Admiralty jurisdiction in the Dominions is usually founded on the Imperial Colonial Courts of Admiralty Act, 1890. The status of British subjects and of aliens is regulated for the whole Empire by the British Nationality and Status of Aliens Acts, 1914–22, but the right to naturalize aliens is granted by the same acts to the Dominions, such naturalization being valid within the limits of the Dominion alone. On the other hand, provision is made for an Imperial naturalization which may be granted in any Dominion or the United Kingdom, and which has effect throughout the Empire, but this part of the Imperial legislation does not apply to any Dominion unless the Parliament thereof formally adopts it. The same principle of legislation which may be adopted by a Dominion is seen in the Copyright Act, 1911, which assured to the Dominions the full measure of authority in matters of copyright which had hitherto been denied in the interests of British authors

and publishers Imperial legislation is also at the base of all the Dominion constitutions save that of Newfoundland, and may be resorted to if necessary to carry out alterations and to remove restrictions which the Dominions cannot, in view of the Colonial Laws Validity Act, 1865, vary. One important field is that of merchant shipping, which occupied the attention of the Imperial Conference of 1926 The Conference admitted that it was difficult to reconcile the terms of ss. 735 and 736 of the Merchant Shipping Act, 1894, with the development of Dominion status, but it was also impressed by certain very important practical considerations and the necessity of securing uniformity in these matters throughout the Empire. The qualifications for registry as a British ship are at present determined by the Imperial Act, which also provides for Naval Courts at foreign ports to deal with crimes and offences on British ships abroad; moreover, a vast number of important functions as regards British shipping are performed by British consuls, who can only be given powers, as matters stand, by an Imperial Act, and the status of British ships in time of war might be obscured by any change in legislation One important consideration not referred to by the Conference is that Dominion legislation could not be enforced on ships which did not resort to Dominion ports, for which reason, among others, the Colonial Merchant Shipping Conference of 1907 achieved unanimity in recommending that Dominion legislation should be restricted, in accordance with the Act of 1894, to dealing with the coasting trade and with shipping registered in the Dominion, while trading in the Dominion. The issues were referred to a Committee by the Conference, and it is clear that a very comprehensive system of enforcement of Dominion legislation in virtue of an Imperial Act will be requisite to give the Dominions effective powers over shipping.

The Imperial Government and Parliament have alike functions of sovereignty which are not yet fully conferred on the Dominions. The Governor of a Dominion, as has been seen, has no delegation of the power to annex territory, though that may be granted for a special purpose. Boundaries

are in fact altered under the final authority of the Colonial Boundaries Act, 1895. The territorial limitation on Dominion legislation would render legislation for the annexation of territory invalid without such Imperial confirmation, unless in any special case the general authority to legislate for the peace, order, and good government of the Dominion were held by implication to justify a measure of extra-territorial authority. This was the ground on which the Parliament of the Union was advised by its Speaker that it could legislate to control the mandated territory of the Union of South Africa In New Zealand, on the other hand, it was felt right to proceed by Order in Council under the Foreign Jurisdiction Act, 1890, and in Australia the assumption of Commonwealth power has been held valid under the Constitution, and in view of the Imperial Treaty of Peace Act, 1919. The making of war and peace rests with the Imperial Government, and the control of the treaty power formally remains in its hands, but by a long process of evolution authority in these matters is virtually shared among the United Kingdom and the Dominions Equality of status is recognized by the Imperial Conference of 1926 as the principle governing Inter-Imperial relations, 'but the principles of equality and similarity, appropriate to status, do not universally extend to function. Here we require something more than immutable dogmas. For example, to deal with questions of diplomacy and questions of defence we require also flexible machinery—machinery which can from time to time be adapted to the changing circumstances of the world'.

It follows, therefore, that we must consider, not merely the measure of control over the internal affairs of the Dominions still vested in the Imperial Government (chap. iv), but also the issues of foreign policy (v) and defence (vi), and the general machinery of Imperial co-operation (vii).

CHAPTER IV

IMPERIAL CONTROL IN INTERNAL AFFAIRS

GREAT as in theory are the powers of the Imperial Parliament and Government, their exercise has been in practice so limited as normally to be called forth merely in aid of Dominion wishes, and not as a means of control. The exception of merchant shipping is more apparent than real, for, if the United Kingdom were a foreign State, it would be open to her Government to protest effectively against interference by the Dominions with her shipping, and to back up her protests with retaliatory action. Nevertheless there remain certain matters which in the normal sense may be deemed mainly of internal concern but in which there still exists the possibility or reality of Imperial control.

1. *Constitutional Change*

The declaration of Dominion autonomy at the Conference of 1926 led to the raising in an acute form of the question of the power of Canada to amend her Constitution. It was pertinently asked, as by Mr Bennett, leader of the Opposition, how an autonomous Dominion could claim to be free of Imperial control if her Constitution in all essentials were unchangeable save by an Imperial Act, as when in 1907 the Provincial subsidies were readjusted, in 1915 the constitution of the Senate reformed, and in 1916 the life of Parliament prolonged for a year Efforts were accordingly made by a Provincial Congress in 1928 to secure agreement on some mode of change within Canada itself, but these proved abortive, for Quebec will not surrender a constitution which secures her religion and language rights The Constitution, it is admitted, is a pact, and cannot be changed in essentials unless with the assent of the Provinces So long as matters continue thus, the Imperial Government and Parliament cannot evade the obligation from time to time of considering whether a request for change from the Dominion Parliament has sufficient backing to permit of action.

The Commonwealth is in happier case, for the framers of the Constitution secured the right of the Parliament confirmed by a referendum of the people to carry out alterations. The process is slow, and in the emergency of the war it was contemplated to secure an extension of the duration of Parliament by an Imperial Act, nor is such recourse impossible in case of urgent necessity. But it seems clear that the powers of alteration are not unlimited, and it is probable that they would hardly extend to complete destruction of the federal basis, so that, if the Labour Party, which desires unification, should obtain a popular mandate to this end, the change should at least be confirmed by Imperial Act. In the case of the States the rules as to reservation of Bills under the Act of 1907 secure that no change of importance can be made effective without Imperial approval; thus the abolition of the Upper House of Queensland in 1922 was made effective only after the Imperial Government had maturely weighed all the arguments for and against this course, and had decided that no Imperial interest dictated intervention. Similarly during the efforts of the Labour ministry in New South Wales from 1925 to 1927 to abolish the Upper Chamber, the Imperial Government declined to intervene, and to compel the Governor to swamp that Chamber, so as to permit of a Bill being carried for its extinction, although such action was strongly requested by the Government. New Zealand's powers of alteration are legally rather obscure; it is probable, however, that the Colonial Laws Validity Act, 1865, confers the widest authority, as is certainly the case in Newfoundland, in both, Bills of importance altering the Constitution are reserved for Imperial approval. In the Union of South Africa reservation of important changes is required, while to safeguard the Cape native franchise it was provided that it should be abolished only by the two Houses sitting together and by the passing of the measure on the third reading by not less than two-thirds of the total membership of the Houses, while any such Bill was specially to be reserved, a rule which delayed the extinction of the vote. The Irish Free State Constitution contemplated an elaborate procedure of amendment,

but gave power of alteration by simple Act for eight years, and this period has now been extended to sixteen

A point of special Imperial interest is the position of the Governor. The Commonwealth and Union Constitutions forbid alteration of salary during his tenure of office; Bills affecting the salary in New Zealand and the States must be reserved, and, while the Canadian Provinces have freedom to alter their Constitutions within the limits assigned by the British North America Act, 1867, they may not affect the office of Lieutenant-Governor, as it is a Dominion appointment In point of fact, with the decision of the Imperial Conference of 1926 to take away from the Governors-General the duty of acting as agents of the Imperial Government, Imperial interest in the office is diminished, and proposals for change so as to make the selection that of the Dominion Parliament or Government or people could be entertained. In fact these appointments are now largely dictated by Dominion wishes, but the appointment of Dominion ex-statesmen has not yet become effective except in the Free State. As regards the Australian States, proposals for local appointments are open in practice to the objection that it is hard to avoid partisan action; thus in 1920 the Lieutenant-Governor of Queensland, a Labour supporter, misused his power, when acting as Governor in the latter's absence, to swamp the Legislative Council in order to compel it to pass confiscatory measures, and in 1924 another Labour Lieutenant-Governor in Tasmania actually assented to a money Bill which had been refused adoption by the Legislative Council, thus reducing the law to a farce. Oversea Governors are less liable thus to violate their duty of impartiality, and may serve as a valuable link between the mother country and the States.

The importance of the Crown as a unifying factor in the Empire has led to the suggestion, rendered more practicable by the new status of the Governors, that these offices in the great Dominions should be filled by Princes of the Blood Royal. The Duke of Connaught, his son, and the Earl of Athlone have rendered excellent service in the Dominions, but it is clear that no hard and fast rule can be suggested, for

the Dominions prefer to make their choice from time to time on considerations of personal fitness, and special qualification

Of theoretic, but happily for the moment of minor practical interest, is the issue whether the Dominion Parliaments have the power to enact the termination of relations with the United Kingdom. Would such a measure on receiving the royal assent through the Governor-General, or Order in Council, be legally effective for secession, as the Nationalist party in the Union has claimed? The answer in law is clearly in the negative The Union Parliament may legislate for the peace, order, and good government of South Africa only in virtue of the South Africa Act, 1909, which was passed in order to unite the British colonies in South Africa 'under one Government in a legislative union under the Crown of the United Kingdom of Great Britain and Ireland'; the severance of the tie with the Crown needs a British Act to complete the process. The Canadian Parliament legislates under the British North America Act, 1867, passed to provide for the federal union of the Provinces 'under the Crown of the United Kingdom'. The Commonwealth of Australia Constitution Act, 1900, recites as its purpose to carry out the agreement of the people of the Australian colonies 'to unite in one indissoluble federal Commonwealth under the Crown of the United Kingdom'. The Irish Free State exists only by virtue of a treaty, which assigns to it status as a Dominion, and which, by the Imperial and the Free State legislation of 1922 alike, is absolutely binding on the Free State and overrules the Constitution wherever that departs from its provisions. From the political point of view it has been laid down in argument by the late Mr. Bonar Law that Dominions status implies the right of secession, the thesis has been asserted by General Hertzog and denied by General Smuts Article 10 of the Covenant of the League of Nations sheds some light on the point, for all the members of the League guarantee the existing territorial integrity of the British Empire, so that the withdrawal of any portion cannot be contemplated as legitimate save with mutual consent. The real issue would be what measure of agreement among the

people of the Dominion would justify the assent of the United Kingdom and the rest of the Empire to secession. It was, in part, realization of the difficulty of the problem which has diminished, without eradicating, the desire of the Dutch population in the Union for formal independence and induced a measure of acceptance of Dominion autonomy as defined in 1926.

2. *Judicial Appeals*

The royal prerogative to permit appeals in judicial matters was rendered statutory in 1844 by the Judicial Committee Act, and the right, therefore, to hear such appeals cannot be taken away save by subsequent Imperial legislation In the case of the Commonwealth, as has been seen, appeals in constitutional cases involving the rights of the Commonwealth and the States or of the States *inter se* are reserved to the High Court, unless it grants leave to appeal to the Privy Council, and this is hardly ever done In the Union appeal lies only from the Appellate Division of the Supreme Court, and in both these Dominions Parliament may legislate further to restrict appeals, but such Bills must be reserved, and no such legislation has yet been proposed. Canada has attempted to cut off appeals in criminal matters, but in 1926 this was ruled invalid, though the Privy Council, in fact, will not deal with criminal matters save in extraordinary circumstances of miscarriage of justice or constitutional issues. The Irish Free State was compelled to include in its Constitution provisions which secure that on constitutional issues an appeal will always lie by permission of the Privy Council from the Supreme Court, while at present in other cases the power to hear appeals exists. But the Parliament has by legislation altered the law in two cases to deprive appellants of any chance of success, and in the one constitutional case which has been decided, that affecting the pension rights of civil servants retiring as a result of the change of administration, the Free State refused to pay the additional sums awarded, and the British Government in 1929 had to undertake the charge. It is the purpose of the State to secure early abolition,

and at the Conference of 1926 the British Government evaded compliance with this request only by the argument that, while it was not desired to impose the court on an unwilling Dominion, it was necessary that there should be agreement in a change which, though primarily affecting one Dominion alone, had a general bearing It is in fact clear that the abolition of the appeal for one Dominion would almost compel the others to abandon it on the ground that its retention marked a diminution of status

In the other Dominions, the Provinces, and the States, appeals lie either as of right when certain conditions as to value or character of the case are fulfilled, or by leave of the local Court or of the Privy Council. Normally appeals are permitted only from the highest appellate Courts; in Canada and in Australia (except in constitutional cases) appeals may be brought to the Privy Council or the Supreme or High Court respectively; if the latter is chosen, a further appeal is very sparingly allowed, except in important cases in Canada The demerits of the appeal consists of the advantage it gives to wealthy corporations over ordinary suitors, its delay and its suggestion of the inferiority in capacity or integrity of Dominion judges and of the dependent status of the Dominions. Its merits are, however, undeniable. In the vexed issues of Provincial rights, especially as regards education and language in Canada, it has played the part of an impartial authority, unswayed by political consideration; it helps to secure uniform interpretation of so much of the common law as remains untouched by Dominion reforming zeal, and of statute law adopted in similar terms in diverse parts of the Empire, such as legislation on marine insurance and negotiable instruments. It possesses the highest authority on the prerogative of the Crown, and it can uphold the supremacy of Imperial legislation over Dominion enactments. Legal opinion in the Dominions often favours its continued operations, and it serves one valuable purpose in bringing Dominion counsel to England and into closer touch with the English bar

Discussions at Imperial Conferences, especially in 1911,

1918, and 1926, have not solved the problem of its future. Some attraction attaches to the suggestion of Mr J Chamberlain in 1900, adopted by Mr. Hughes in 1918, that the House of Lords, as a Court, and the Judicial Committee, should be merged into one Imperial Court of Appeal, which might sit in several divisions, one of which might visit the Dominions from time to time. This would necessitate the effective addition of Dominion judges At present, under Acts of 1895, 1908, 1913, and 1928, Dominion judges who are Privy Councillors are members of the Court equally with Privy Councillors who hold or have held high judicial office in the United Kingdom, while for Indian appeals two high judicial authorities of Indian experience sit But, as no salaries are provided by the Imperial Parliament, Dominion judges can attend only sporadically, while the proposal contemplates that they would take a full part in dealing with appeals from England, Scotland, and northern Ireland. The proposal, however, has evoked no enthusiasm in the Dominions and still less approval in the United Kingdom. At present the claims on judicial time are so heavy that it is believed that the Privy Council is sometimes less effectively manned than the House of Lords, while a certain disadvantage attaches to the rule by which only one report is issued and dissenting judgements are forbidden. Dominion opinion, however, prefers this form, as it enhances the weight of the finding of the Court, which is embodied in an Order of the King in Council, and is then binding on all Courts in the Dominion. The Court has one clear advantage over the House of Lords, for it is prepared, however reluctantly, to reconsider its decisions when sufficient ground is advanced to prove that an earlier ruling has been based on misunderstanding or failure to appreciate relevant considerations.

3. *Honours*

The King is the fountain of honour, but, apart from appointments to the Royal Victorian Order for personal services, he acts on the advice of his Prime Minister, or in the case of foreign and Dominion services on that of the responsible

minister. Honours, it is clear, are not local in operation; granted by the King, they receive recognition throughout the Dominions, and on this ground it is impossible for any Dominion Government to claim the unfettered right to recommend the bestowal of honours A local decoration might be created, as recently suggested in Canada and the Irish Free State, in which case it would be granted by the Dominion Government, but its value would be seriously diminished The Governor has no delegation of the prerogative in this regard, but his advice has always been an important factor with the Imperial Government in weighing recommendations Moreover, in principle he is entitled to make suggestions for awards based on municipal, charitable, literary or scientific services, and, in the case of Canada, for Provincial work, but in fact recommendations on these as on political and administrative grounds are made by the Prime Minister, usually with the knowledge of his colleagues. The decision as to the number of awards of the various honours (which have ranged from M.B E. to peerages and Privy Councillorships) rests with the Imperial Government. In Australia, the States may recommend as well as the Commonwealth, but the Governor-General is consulted by the Imperial Government in order to aid in determining the relative weight of claimants.

Long valued in Canada as a link of Empire, the improvident grant of a barony and a baronetage to unpopular Canadians, and the offer of a large number of places in the Order of the British Empire, evoked a vehement agitation in 1918 which, vainly met in that year by moderating proposals of the Government, resulted in 1919 in the demand of Parliament that no further honours should be conferred on persons ordinarily resident in Canada and that hereditary honours already granted should be brought to a close on the deaths of their actual holders. The Imperial Government has deferred to the first demand, without satisfying the second, which would require legislation and which is, in point of fact, of minimal practical importance. Efforts to reopen the issue have been rebuffed by the solid vote of the West, which judges

that honours and merit in the Dominion have not been closely allied Privy Councillorships are not objected to, nor, of course, the war honours granted for services in 1914–18, but by request of the Government, royal permission is not given to Canadians to make use of foreign honours which are rather freely bestowed on Canadians The example of Canada has been followed in the Union of South Africa since 1925. In the Free State the Constitution demands the advice or approval of the Executive Council for the bestowal of honours in respect of services rendered in, or in relation to, the Free State, and in fact no honours have since its creation been conferred; the Constitution does not deal with honours conferred on Irish citizens for other services rendered outside the State. In the other Dominions honours are still eagerly appreciated, and happily, as ministers cannot control their bestowal, the evils of the sale of political honours are little, if at all, in evidence.

The Imperial Government also advises the Crown regarding the recognition in the United Kingdom of the style Honourable, which is accorded to ministers, to certain ex-ministers, presiding officers of legislative bodies, legislative councillors, and judges The style Right Honourable, asked for in respect of the Canadian Senate by Sir J Macdonald, has been reserved to members of the British Privy Council save that it is still retained, illogically, in Northern Ireland.

4. *The Flags of the Empire and the Dominions*

The Union Jack, appointed in virtue of the Union Act, 1801, is the flag of the Empire, which can be displayed by every British subject in any part of His Majesty's Dominions. British merchant vessels are assigned by the Merchant Shipping Act, 1894, the red ensign, and use of any unauthorized flag may be penalized by a fine of £500. Permission, however, has been accorded to the Dominions to have a modification of the flag with the addition of the Dominion badge for the use of the mercantile marine registered locally, and in the Commonwealth the blue ensign with badge is the flag which has been officially, by regulation, prescribed for use by

the armed forces of the Commonwealth, who displayed it in the war of 1914–18. The flag is also freely used on land and is displayed in the London and other offices of the Commonwealth, but has not been prescribed by law for general use In the case of New Zealand, however, the modified form of the blue ensign was duly created the national flag by an Act of 1901, passed with the authority of the Imperial Government. The creation of a national flag has been discussed in Canada, but the amount of approval attained has been insufficient to warrant further progress at present; the Canadian badge is borne on the mercantile marine flag under the usual Imperial authority. The case of the Irish Free State is as usual anomalous; a tricolour (orange, white, and green) flag has been from the first adopted and recognized generally without legal authority, which the Government has declined to seek from Parliament.

In the Union of South Africa a bitter controversy was carried on in 1925, but ended in a compromise in 1927. The Nationalists were anxious to create a new flag in which the place of importance would be accorded to the former flags of the South African Republic and the Orange Free State, leaving the Union Jack to a minor rank. After grave excitement had been produced, the Prime Minister, gratified by his success at the Imperial Conference, devised a proposal which has been accepted and which creates two flags, the Union Jack as a symbol of the connexion of the Union with the Empire, the other as the more truly national flag, in which the Union Jack is present as well as the old republican flags. The official use of the flags is regulated by the Government under the Act, and, if not ideal, the position evades direct affront to British sentiment in favour of the Union Jack.

The Dominion naval forces are entitled to display the White Ensign, the British war flag, and to fly the Dominion flag at the jack staff. This plan was adopted by the Imperial Conference of 1911 as a means of symbolizing the essential unity of the British Navy combined with the distinct character of the Dominion units.

5. *The Prerogative of Mercy*

There is one curious rule under which Governors are required themselves to exercise their discretion with a view to safeguarding Imperial interests. It has long been the rule that the King will not interfere with the exercise by Governors of the prerogative of mercy which is always delegated to them, but the Governor is not absolutely free to exercise his function on ministerial advice. The normal rule, applied even to Canada, is that the Governor must receive in capital cases the advice of the Executive Council, and in other cases that of one minister at least, but in any case in which the pardon or reprieve might directly affect the interests of the Empire, or of any country or place outside the area of his Government, the Governor 'shall before deciding as to either pardon or reprieve, take those interests specially into his own personal consideration in conjunction with such advice as aforesaid'. In Newfoundland, where the small size of the community long rendered ministers willing to leave the power in the hands of the Governor, and in the Union, where there is risk of conflict between native and European interests, the representative of the Crown is required in capital cases to exercise his deliberate judgement, after hearing the advice of the Executive Council In the case of the great Dominions it may be assumed that the instruction is already in effect otiose, but, so long as it is not formally recalled, it binds the Governor-General to a personal responsibility to secure due regard to Imperial interests. For the States and Newfoundland it will doubtless be retained for the present at least.

CHAPTER V

THE CONDUCT OF FOREIGN AFFAIRS

1. *The Development of Dominion Autonomy*

THE Imperial Government naturally at first reserved entirely to its control foreign relations, though it was wont to consult the Local Governments fully as to their interests, and in 1854 Lord Elgin, Governor-General of Canada, was employed to secure a reciprocity treaty with the United States In 1871 a more striking step was taken, for Sir John Macdonald, Prime Minister of Canada, assisted as one of the British delegates in the framing of the treaty of Washington, which settled for the time grave political and economic issues between the Empire and America On the other hand, no encouragement was given to the suggestion of a Victorian Royal Commission in 1870 which, inspired by Belgian neutrality in the Franco-German war, urged that the colonies should be given the power to make treaties and be recognized as neutral States, and requests from the Australasian colonies for the right to conclude commercial treaties with foreign States were negatived in 1871–3 On the other hand, in 1877 it was conceded that British commercial treaties should no longer be made applicable to the colonies without their assent, and from 1882 every treaty contained, if possible, a clause permitting separate adherence for the colonies In 1899 this was carried farther, and the right of separate withdrawal was secured. Moreover, as a result of the Colonial Conference of 1897, when Canada pointed out that the treaties of 1862 with Belgium and of 1865 with the German Zollverein gave foreign nations equal treatment with the United Kingdom in the colonies, and rendered nugatory her attempt to give a British preference, steps were taken to terminate these treaties, and to establish the principle that inter-imperial commercial relations should stand apart from relations with foreign States. The Colonial Conferences of 1902, 1907, and 1911, resulted in steps being taken to secure for the Dominions the right of separate withdrawal from treaties concluded before the prac-

tice of asking for this right came into force, and nearly all powers save Italy made the desired concession (General commercial treaties, therefore, under the practice which is still in force, give the Dominions the right of separate adherence and withdrawal.) But they confer, even when the Dominions do not accept them, great benefits on Dominion residents, for they, as British subjects, obtain all the advantages of residence, personal immunities, and most-favoured-nation treatment as regards property and professions stipulated in the treaty, losing only privileges connected with Dominion products or manufactures. The British Government is also willing to seek in its general treaties to obtain as far as possible special concessions for the Dominions, e.g., for Newfoundland.

(The essential need of the colonies was, however, for special treaties adapted to their needs, and the British Government by 1879 was perfectly willing to secure this result, and to allow a colonial representative to share in negotiations with the British Minister at the Court of the foreign power.) It was not until 1893, however, that success was achieved by Canada in the shape of a treaty signed together with the British representative at Paris by Sir C Tupper In 1894 the issue was discussed at the Ottawa Conference, and in 1895 the Marquis of Ripon laid down the principles which must govern such negotiations. (They must result in a treaty between the Crown and the foreign power, for to make the colony a party would dissolve the Empire They must be signed by the British representative along with the colonial officer, and both must share the negotiation. When concluded, they must be ratified by the Crown on the advice of the Imperial Government acting on the request of the Colonial Government, and, if legislation were necessary, after action by the Colonial Parliament. No treaty could be sanctioned unless any concessions made under it were unconditionally applied to every part of the Empire as well as granted to all States entitled to most-favoured-nation treatment, and no concession must be accepted prejudicial to other parts of the Empire, a rule enforced against Newfoundland in 1891 in favour of Canada.)

These rules were reaffirmed by Sir E Grey in 1907, when, however, the concession was made that, while the British representative must sign the treaty, the negotiations might be carried on without his intervention by the Dominion representative. Canada secured new treaties of 1907 and 1909 with France on this basis, but she also negotiated informally with the consular representatives of Germany and Italy in Canada in 1910 for tariff arrangements; these were not regarded as treaties, and, though reported to the Imperial Government, were not ratified, but merely made effective by action in the countries concerned. This was followed by the conclusion in 1911 of an informal accord with the United States for a measure of reciprocity to be carried out by legislation in either country without any treaty being concluded. The proposal ultimately resulted in the fall of the Canadian Government, suspicion having been aroused by remarks of United States politicians which indicated the belief that reciprocity in trade would attract Canada into the political orbit of the United States. This result for a time discredited the informal methods adopted.

In non-commercial and political matters the Imperial Government early recognized the duty of considering special colonial interests; as early as 1857 Newfoundland received a formal assurance that no addition would be made to French or United States rights of fishery in her waters without consultation, and Canada was constantly consulted on her special interests as regards the United States. The final decision lay with the Imperial Government, which alone possessed the power to conduct foreign policy, and indignation was from time to time raised in the colonies because of seeming indifference to colonial interests, although in fact British action was often dictated by general considerations of foreign relations which the colonies did not understand. There was resentment of the refusal to homologate the unauthorized annexation by Queensland in 1883 of New Guinea, and opinion in the Cape of Good Hope only tardily realized that the loss of South-west Africa to Germany in 1884 was due to the reluctance of the colony to face the trifling cost of adminis-

tration. Mr. Seddon denounced the surrender of Samoa in 1899, ignoring that it was extorted by Germany during the crisis of the South African war, while the Commonwealth and New Zealand resented the condominium with France in the New Hebrides agreed upon without their assent in 1906 to prevent the assertion of German claims. In 1907 the refusal of Newfoundland to accept a *modus vivendi* with the United States pending the settlement by arbitration of the issue as to fishery rights resulted in the overriding of the local law by an Order in Council issued under the Imperial Act of 1819, passed to enable the Crown to carry out the terms of the Anglo-American treaty of 1818.

On general issues of foreign policy the Dominions were not consulted. The Hague Conferences of 1899 and 1907 were conducted by the Imperial Government alone, and the accords with France of 1904 and with Russia of 1907 were resolved upon without Dominion assent. But the Declaration of London in 1909 which was the outcome of the second Hague Conference attracted attention in the Dominions, where anxiety was caused as to the chance of interruption of Empire trade in war, and at the Imperial Conference of 1911 the Imperial Government secured agreement in favour of the consultation of the Dominions when preparing instructions to the British delegates to Hague Conferences, and the circulation to the Dominions of draft conventions provisionally agreed to at such Conferences before final signature. A similar procedure should, when time and opportunity and the subject-matter permitted, be followed when preparing instructions for the negotiation of other international agreements affecting the Dominions. But Sir Wilfrid Laurier was insistent on disclaiming any right for the Dominions to be consulted, since consultation would involve responsibility for the action taken thereafter. By an interesting innovation the work of the Conference was supplemented at meetings of the Committee of Imperial Defence at which British foreign policy was for the first time set forth to the statesmen of the Dominions, with the result that cordial approval was given to the renewal of the Anglo-Japanese alliance, with results of the

highest value in the war of 1914–18. In 1912 the new Canadian Prime Minister was anxious for more extended consultation; he contemplated the stationing in London of a resident minister of his Cabinet who would attend meetings of the Committee of Imperial Defence when matters of Dominion concern were considered and would have free access to British Ministers to keep in touch with British Imperial and foreign policy. An offer to adopt this policy was made to the Dominions but elicited no approval, and even in Canada no action to station a minister in London was taken until 1914. But in 1912 at the Radiotelegraphic Conference a most important departure was made; the Dominions were represented there by delegates with full powers from the King to represent the Crown in respect of the Dominions, thus differentiating them from the British delegates, whose authority was unlimited. The precedent, followed in 1913–14 at the Conference on Safety of Life at Sea, exhibited for the first time the Crown acting through separate sets of plenipotentiaries, and paved the way for the concession to the Dominions of a measure of international status.

The war of 1914–18 accelerated in almost incredible degree their progress. It had been declared without consultation of the Dominions by the British Government, which until 1916 kept the control of its conduct and of foreign relations in its hands. But the device of summoning in 1917 and 1918 meetings of an Imperial War Cabinet, in which the British War Cabinet met with Dominion representatives and decisions for combined action were matured in consultation, was followed by the transformation of the Imperial War Cabinet into the British Peace Delegation at Paris. The Prime Ministers of Canada and the Commonwealth, however, insisted that the Dominions must have their individuality recognized at the Conference, and after a struggle the British Government succeeded in securing the concurrence of the allied powers in this innovation. The British Empire was represented equally with the four great powers, United States, France, Italy, and Japan, by a delegation of five, on which Dominion representatives could sit, and in addition the four

great Dominions were accorded representation similar to that conceded to the minor allied powers, they thus fared better than these powers, for, apart from this right to express their views on matters of special interest, they helped to frame British Empire policy, which was enunciated as a rule by the British Prime Minister as member of the Council of Four, but only after full discussion with the Dominion spokesmen. Finally, at the demand of the Dominions, the peace treaties were signed both generally for the Empire by British plenipotentiaries, and specifically for the Dominions by their representatives, and ratification was only expressed after the Dominion Parliaments had been accorded the power to discuss and approve the treaties. The Dominions thus achieved an international status which was placed beyond doubt by their inclusion as original members of the League of Nations.

2 *The Dominions and the League of Nations*

The position of the Dominions within the League was closely based on the position which was accorded to them during the negotiations in Paris ! Thus the British Empire as such was accorded membership of the Council, but in addition to the British Empire as a member of the League there were placed beside it Canada, the Commonwealth, South Africa, and New Zealand, together with India, in anticipation of its ultimate attainment of Dominion status. The mode of grouping was intended to show that the Dominions, though distinct members of the League, were also parts of the Empire, while the Empire representative on the Council was naturally expected to voice Dominion opinion as far as that could be gathered. None the less the Dominions in the League are perfectly independent of the British representatives. Common consultation, though desirable, has never been regularly practised; indeed the South American States on the League use it as much, if not more, than do the Dominions. The spokesmen in the Assembly act on authority given by their Governments alone, and not under full powers issued by the King Appointments to Commissions and to official functions are accorded as if the Dominions were distinct nations; even in formal matters such

as seating the Dominions are placed alphabetically, and not as one group. Dominions vote as they please, and many instances of divergence between the British and the Dominion view or between different Dominions are recorded. The admission of the Irish Free State in 1923 after its creation was carried out exactly as if an independent State were applying to be accepted. There is similar independence in the Labour Organization, which is organized under the treaties of peace and works in conjunction with the League. The labour conventions which it arranges are discussed by Dominion delegates without full powers from the King, and, if accepted, are ratified by mere Orders in Council, issued by the Dominion Governments, and not by instruments of ratification signed by the King. The Dominions again signed separately the Statute of the Permanent Court of International Justice, and are entitled to form bodies which can nominate jurists for election to the Court. Moreover, this power has necessitated the development of a distinction between British subjects and Dominion citizens, for it is a rule that groups may not nominate more than two nationals, and that only one national of any State can sit as judge. In order not to render it impossible for a Dominion to put forward a national, Canada in 1921 took the lead in defining Canadian nationals, who are British subjects born in Canada, their children born abroad, and other British subjects domiciled in Canada; the Free State Constitution provides for Free State citizenship, and the Union in 1927 defined Union nationality. But these are all mere divisions of British subjects, though it seems fairly clear that for purposes of the Permanent Court the distinction would be sufficient to allow a Dominion national, if elected, to sit as well as a British national. Most striking of all as a sign of the independent character of the Dominions is the fact that the Irish Free State sought in 1926, without British support, to obtain election to the Council, which was, however, duly accorded in 1927 to Canada, elected to a non-permanent seat, despite the permanent presence of a British Empire delegate.

On the other hand the unity of the Empire is not wholly

ignored within the League.) The crucial issue was raised in 1924 by the decision of the Irish Free State that under Article 18 of the Covenant it was necessary to register the treaty of 1921 recognizing the Free State. The British Government at once denied that the Covenant, or treaties made under its auspices, applied to the relations *inter se* for the parts of the Empire, while the Free State persisted in its attitude. (But at the Imperial Conference of 1926 the Free State gave way; it accepted the doctrine that it was established law that League treaties did not apply to the relations of the parts of the Empire *inter se*, and agreed that it would be proper that treaties negotiated under League auspices should not be concluded in the names of States which might cause misapprehension on this point, but, as formerly, in the names of heads of States, a practice which would make it clear that they had no application between parts of the Empire; if such application were desired, it should be distinctly provided for.) It follows, therefore, that the relations of the parts of the Empire are not governed by the terms of the Covenant. On the other hand, in disputes where one part of the Empire is engaged, other parts cannot be regarded as independent nor could their votes be counted. Moreover it seems that, if a Dominion were concerned in a case before the Permanent Court, it would not be entitled to have a national judge on the Court so long as there was a British judge, while an adversary which had not a national on the Court might be entitled to claim the presence of one, if the British judge were to sit. But these considerations do not seriously impair the status of the Dominions as full members of the League.

3. *The Dominions and the Treaty Power*

Important as is the sphere of League of Nation operations, there remains outside its scope a large body of foreign relations in regard to which the Dominions do not possess the same autonomy as they enjoy in League matters. Moreover, the resolution of the Imperial Conference of 1926 in favour of the drawing up of League Conventions in the form of treaties between heads of States must tend to diminish the

class of matters in which Dominion representatives come to agreements under the authority of their Governments alone, and ratification is based on the action of their Governments without Imperial intervention. It would, of course, have been perfectly simple if it had been so desired to hand over to the Governors-General the power to make treaties, in which case each part of the Empire would have been in international law a distinct State united in a personal union through the person of the King In fact, however, no such result has been achieved. The unity of the Empire from the point of view of diplomacy is still a doctrine approved by the Imperial Conference and the Dominions, and the necessity of combining this unity with Dominion autonomy has led to the elaboration since 1919, largely through the work of the Imperial Conferences of 1923 and 1926, of a complex system regulating the diplomatic representation at foreign Courts of the Dominions and the making of treaties for the Dominions through their representatives abroad or through other agencies.

Diplomatic representation was first demanded by Sir R Borden for Canada at Washington, on the score of the enormous mass of Canadian business conducted in the British Embassy and the desirability of entrusting it to a Canadian minister in close contact with the Ambassador. Though this was conceded in 1920, it was not made effective, and the Irish Free State was the first to establish a ministry at Washington in 1924. In 1926, however, Canada decided to make the appointment, whereupon the United States reciprocated and in 1927 sent ministers to Ottawa and Dublin Since then Canada has established relations with Paris and Tokyo, the Free State with the Vatican, Berlin and Paris, and the Union has decided on sending ministers to Washington, Rome, and The Hague. In all these cases the necessary steps to secure the acceptance of an envoy have been taken by the British Government, which secures also the issue of letters of credence from the King in favour of the minister and, when required, letters of recall, the minister signs treaties under full powers from the King, and treaties are ratified by the King. In all these matters the King acts as desired by the Dominion Govern-

ment, but the formal advice under which the sign manual is affixed is that of the Secretary of State for Foreign Affairs. The duties of these ministers are to conduct under the instructions of their Governments all matters of business solely affecting their Governments; if issues are of a more general character, they are conducted by the Ambassador in consultation with the Dominion ministers or by them jointly; if disputes arise as to whether matters are of general interest, they are settled by discussion between the Governments of the Empire. So far harmony had been achieved, in 1929 the serious case of the capture of the Canadian ship *I'm Alone* on the high seas by a United States vessel, under the claim of the right of hot pursuit for a breach of the liquor laws of America, was handled primarily by the Canadian Minister with the advice and aid of the Embassy. The system has been disapproved in Australia and New Zealand on the score of the danger of weakening the Empire, but it has been defended by Mr Mackenzie King on the ground that it is only natural that, as there is co-operation in foreign affairs between the Governments of the Empire, they should have representatives at foreign Courts to carry out that co-operation, while expressing different aspects of Imperial interests. So far it has been accepted by the Governments concerned that the separate representation is not to be deemed as impairing the diplomatic unity of the Empire.

Treaty negotiations, whether conducted by Dominion ministers or by special delegates or by British diplomats acting on Dominion requests, are governed by fixed rules. Treaties fall into two great classes, according as they regulate matters in which acceptance by the whole Empire is not necessary and questions in which there must be united action, for instance the Kellogg Pact of 1928 for the renunciation of war or treaties on disarmament. In the former case, under the rules of the Conference of 1926, any Dominion which desires to negotiate must notify all other parts of the Empire, so that they may consider whether they will be affected and whether they desire to appoint plenipotentiaries to express their views. After notification a Government may proceed to negotiate,

but it must not agree to any terms which impose active obligations of any kind on any other part of the Empire, unless it obtains the consent of that part, in which case normally plenipotentiaries would sign the treaty for that part of the Empire. When concluded, ratification will be expressed by the King on the desire of the part of the Empire concerned. The signature and ratification are both authorized by the King, and he acts on the formal authority of the Foreign Secretary The functions of this high minister of State cannot be regarded as merely those of acting on Dominion instructions; he is responsible for seeing that the rules of the Conference of 1926 have been observed, and, if this were not the case, he would clearly, in virtue of his responsibility to the British Parliament, be compelled to bring the issue before the rest of the Empire with a view to reconsideration Doubtless as a rule the rest of the Empire will acquiesce in the wishes of a Dominion; the British Government in 1928–9, while bringing before the Union Government the objections to their policy of according to Germany the same treatment as to the United Kingdom in matters of trade, in contradiction of the rule that inter-imperial trade should not be placed on the same basis as trade with foreign nations, did not attempt to hamper the ratification of the Union treaty with Germany Under these principles Canada has concluded a considerable number of treaties, the most notorious being one of 1923 regarding the halibut fisheries in the Pacific, which was signed only by Mr. Lapointe as representing Canada, no Imperial interest being involved.

Treaties which require the assent of the whole of the Empire are normally the outcome of international conferences, and various modes of representation are recognized by the Conference of 1926. The Empire may be represented by a common plenipotentiary appointed on the advice of all the parts of the Empire; the treaty of 1924 with the United States regarding the liquor traffic may be regarded as illustrating this mode of action, which is hardly likely to be frequent. Or there may be, as at the Washington Conference of 1921, a single British delegation, made up of separate representatives

of the parts of the Empire. Or there may be separate delegations representing each part of the Empire, providing the Government which summons the Conference can be induced to issue a suitable form of invitation. The last mode is clearly likely to be the more usual mode of procedure. The Dominions even when they desire united action prefer, naturally and properly, to be treated as distinct units, thus the Kellogg Pact was signed separately for each Dominion and separate ratifications were handed in for each, thus emphasizing the autonomy of the Empire as well as its unity.

The Conference left it for the Governments concerned to decide in each case what treaties should be accepted, if at all, for the whole Empire. There has been no agreement yet on this topic. The Locarno Pact of 1925 imposes no obligation on the Dominions or India unless accepted, as it has not been, by their Governments At the instance of Canada any treaty with Egypt will not be expressed to apply to the Dominions. On the other hand, no foreign State would consent to accept a disarmament treaty which did not bind the Dominions. In one respect, however, the Conference of 1926 effected a useful reform; treaties in future will bear clear marks of the parts of the Empire for which they are signed and ratified. It must, however, be remembered that the British Government still can make treaties which confer benefits on the Dominions without their participation, and again when, as in the treaty with Iraq of 1927, it concedes recognition in the name of the King Emperor, that recognition would bind the Dominions though not expressed to apply to them. In the same way the recognition *de iure* of the Russian Government in 1924 by the Labour Government, though effected without consultation with the Dominions, bound them, though Australia in special protested and a promise was duly given that no such action would be taken in future without consultation, a promise duly redeemed in July 1929 on the return of Labour to power, when the issue was whether full diplomatic relations with the U.S.S.R. should be resumed. It is clear that this could be done for part of the Empire only, but that would be inconvenient and confusing. At the same time it was made clear

that the Dominions would be consulted, before acceptance for the United Kingdom was expressed of the optional clause embodied in the Statute of the Permanent Court providing for compulsory arbitration of legal disputes, but it was admitted that the Dominions had not yet been fully consulted on the issue of the policy to be adopted towards Egypt, though this was later done, an interesting admission of the imperfection of Imperial co-operation in foreign policy. So, again in the matter of reparations, the Young Committee of 1929 contained no Dominion representative, but it was laid down by the British Government that no change in the amounts to be paid to the Dominions could be provided for without their consent. The effective defence of British interests at the Hague Reparations Conference in August 1929 rested necessarily with the British Government, despite representation of the Dominions.

Apart from treaties, the Conference of 1923 recognized the right of the Dominions to conclude agreements, mainly on technical points, with foreign Governments; these are not concluded under full powers or ratified by the King, and do not constitute treaties proper in the eyes of British constitutional law. But they must be registered under Article 18 of the League Covenant, and are analogous to conventions arrived at under the auspices of the Labour Organization It is clear that responsibility for the carrying out of such agreements appertains only to the Dominion which concludes them, but it is less certain if the same doctrine can be applied to treaties proper concluded by the King for one Dominion If such a treaty is broken, could the British Government be required to put pressure on the delinquent Dominion in order to compel it to carry out the treaty, or at least to submit the question of its violation to the Permanent Court? This may follow from the doctrine of Imperial solidarity, and from the fact that the ratification of the treaty involved the personal action of the King, who could only act on the authority of the British Government. It is, of course, improbable that difficulty would arise, for the Dominions are all bound by the arbitration treaties formerly concluded, and from time to

time renewed, with the assent of Dominion Governments, by the British Government, and it can hardly be supposed that any Dominion would refuse to arbitrate where a genuine dispute arose. It has always been the aim of the British Government to secure acceptance by all the Dominions of arbitration conventions, a fact which is in part the cause of the prolonged negotiations of 1928–9 for a new arbitration treaty with the United States. Ultimately reference to the Permanent Court may reduce the need of such treaties, but semi-political issues are often not well adapted for handling by a Court, especially one in which continental views of international law necessarily predominate.

4. *The International Status of the Dominions*

It is impossible to fit the position of the United Kingdom and the Dominions into the accepted categories of international law. To say that the Dominions have international personality, but that the British Empire is also an international person, is hardly helpful, for international personality is itself not free from ambiguity The position of the Dominions in the League is clear, and for many purposes they are obviously persons of international law. Outside the League the position is less simple. The solution of a personal union, similar to that which is familiar from the union between the United Kingdom and Hanover from 1714–1837, has not so far been accepted, and the Dominions exercise their right of treaty-making through the King and the Imperial Government, nor is this merely a matter of machinery, for, if it were, its cumbrous character would cause it forthwith to be discarded in favour of action through the Governor-General, a procedure which would at once make it clear to the world that the Dominions were, as General Hertzog asserts, sovereign States in the fullest sense of the term. But it is a normal feature of such States that they have the power to declare war, or neutrality, and make peace, and General Hertzog stands alone in his assertion that the Dominions can under international law claim to be neutral in a British war; in fact it seems clear that he confuses neutrality with the right not to take action to aid

the British forces, and to remain on the strict defensive. The prospect of the matter being put to the test is happily small, thanks to the terms of the League Covenant, reinforced as they are by the Kellogg Pact of 1928. The latter instrument, however, suggests a difficulty, the British Government in accepting it intimated on 19 May 1928 that it understood that it did not prevent Britain treating as a matter of self-defence the repelling of an attack on certain territories in which she was specially interested—doubtless Egypt, the Persian Gulf, and Iraq This interpretation—the British counterpart of the Monroe doctrine—has not been accepted as binding by any Dominion, and a serious problem might be presented if Britain went to war under this reservation, while a Dominion claimed itself bound to remain at peace. But, apart from so remote a contingency, it is clear that normally the Dominions are bound in one vital issue by British action. They are, it may fairly be said, not ordinary States of international law; their fortunes are so bound up with those of the United Kingdom that the whole constitutes a new type of entity in international law, which cannot be styled effectively either a federation or a confederacy, and whose evolution it would at present be premature to conjecture.

CHAPTER VI

THE DEFENCE OF THE DOMINIONS

In the early days of responsible government Imperial troops were maintained in the colonies both for external defence and to secure internal order. Experience, however, in New Zealand from 1860 to 1868 proved the impropriety of affording the use of Imperial troops to carry out a policy which the Imperial Government did not control, and as early as 1862 the House of Commons recorded the view that the colonies should bear the burden of internal defence, and contribute to the cost of protection from foreign attack. Imperial troops, therefore, were steadily withdrawn save from points of imperial interest as naval bases. Imperial forces were withdrawn from Australia and New Zealand in 1870, in Canada Halifax and Esquimalt were transferred to Canadian care in 1905, and in 1921 the Imperial Military Command in South Africa was abolished. Legally the British Government has power under the Army Act to station Imperial forces wherever it deems it necessary; in the case of the Irish Free State certain rights are secured expressly in time of peace with a general power to provide for coastal defence in case of war. But constitutional usage would require under normal conditions the Dominion assent to the stationing of Imperial troops In time of war, each Dominion has the right to expect the fullest measure of British aid On the other hand, as we have seen, a condition of neutrality is impossible, though it has always rested with the Dominions to decide how far they will actively assist in a British war, beyond repelling any attacks made. In the Boer war of 1899–1902 and the war of 1914–18 alike the British Government left the decision as to sending aid entirely to the Dominions, and it was on their own authority that New Zealand, Canada, and Newfoundland adopted compulsory service, which Australia declined, on reference of the issue to the people, to adopt During the war the Dominions wisely placed their forces under Imperial control, but they served in the main as units and towards the

close the Canadian Army Corps was given a markedly independent status in all matters of organization.

The local forces of the Dominions are entirely under their own control. Compulsory training exists in a modified form in Australia, New Zealand, and the Union. The forces are regulated by Dominion Acts, which under the Army Act have extra-territorial validity, so that during the war the Australian forces served under a less severe code than the British. Efforts are made to secure similarity of equipment and training as well as organization with the British forces, but the suggestion of creating a true Imperial General Staff representative of the Empire to frame policy is wholly unacceptable to the Dominions, though a Dominions section of the Imperial General Staff and the Imperial Defence College affords opportunities to Dominion officers to acquire insight into British methods and facilitates co-operation.

Air forces were created in the Dominions as the outcome of the war; Canada, whose military preparations are negligible, has developed aviation for survey and forest protection purposes, and South African airmen have co-operated in the project to secure communication between Egypt and the Cape.

Naval protection was long afforded solely by the British Navy, though the Australian colonies secured in 1865 the passing of the Colonial Naval Defence Act, 1865, which authorized the maintenance of armed forces for coastal protection. In 1887 the uneasiness of these colonies at the amount of protection afforded led to an agreement, renewed in 1897 and 1902, for the maintenance of a stronger squadron on the Australian station, part of the cost to be defrayed by Colonial contributions. But the creation of the Commonwealth, with its encouragement of national feeling, led to the conviction that dependence on the British forces was unsatisfactory, and after the Naval and Military Conference of 1909, held in view of the German menace, had conceded the principle of local navies, the issues were adjusted at the Imperial Conference of 1911. Royal Australian and Canadian navies were to be created, under Dominion control in time of peace and war, but normally to be placed under Admiralty com-

mand when war broke out. The vessels were to carry the White Ensign with the Dominion flag at the jack staff, and certain areas were marked out as their stations, if they went beyond these limits the Admiralty must be informed; if they visited foreign ports, the Foreign Office and the captains must obey the instructions of the latter in matters of foreign intercourse. Officers and men were to be lent by the Admiralty; British and Dominion officers were to be entered on a common list with seniority according to date of their commissions; the King's Regulations and Admiralty Instructions were to be applied with agreed variations. Legal authority for the arrangements was given by the Naval Discipline (Dominion Naval Forces) Act, 1911 Australia acted early on the arrangement; New Zealand followed suit in 1913, and Canada came into line in 1918. The ideal of a single imperial fleet under Admiralty control was brought forward under war conditions by the Admiralty in 1918, but it was rejected by the Dominions, who held that co-operation was possible without such unified control in peace, but felt that, if the Dominion navies grew in strength, it might become necessary to erect an Imperial authority for control of the united fleets in war. Events, however, have not favoured Dominion naval development, the Washington Conference encouraging the restriction of new construction and involving the sinking of the *Australia*, the battle cruiser of the Commonwealth That Dominion alone has maintained any substantial fleet, but financial stringency in 1929 has compelled slackening of progress. Canada and the Union have merely nominal forces, while New Zealand, besides maintaining a small fleet as a division of the British Navy, has contributed generously to the projected naval base at Singapore, whose construction has been delayed by conflicts of policy in the United Kingdom as to its utility or the propriety of its creation in view of the Washington Conference and other efforts at reduction of armaments. Australia despite its anxiety for the base has made no contribution.

The serious burden of Imperial naval defence rests, therefore, substantially on the United Kingdom; the Irish Free

State which is now free to undertake its own coastal defence has shown no anxiety to incur expenditure, and, despite its desire to assert its independent status, the Union is perfectly content to rely on the protection of its commerce by the British navy. Efforts on the part of Mr. Hughes and Mr. Bruce to incite Canada to take a reasonable share in Imperial defence have elicited no response, as Canada enjoys the security of the Monroe doctrine supported by the strength of the British and Australian fleets. No Canadian Government, it is clear, could safely adopt a policy of serious military or naval preparations in face of the pacifism of Quebec and of the non-British elements of the western provinces. It is significant that the estimates for naval expenditure in 1928–9 in the United Kingdom reached £57,300,000 (25*s* 1*d*. per head of population), in the Commonwealth £3,386,999 (10*s*. 9*d*. per head), in New Zealand £710,861, including £125,000 for Singapore (9*s*. 9*d*. per head), but in South Africa only £98,200 (1*s*. 2*d*. per head of white population), and in Canada 2,725,000 dollars (29 cents per head) The following were the percentages of expenditure on naval defence to the total imports and export trade of these territories United Kingdom, 2 81; Australia 1 17, New Zealand 0 70, South Africa 0 06, and Canada 0 12. The Irish Free State expended nothing.

Since the war, the Dominions have centralized the control of their defence forces, and the Commonwealth has gone far to imitate the mode of organization of the United Kingdom, as is natural in view of the substantial attention paid in that Dominion to defence issues. The Ministry of Defence there was set up in 1921 with Naval, Military, and Air Boards, corresponding to the Lords Commissioners of the Admiralty, Army Council, and Air Council. There is a Council of Defence presided over by the Prime Minister, of which the Commonwealth Treasurer and the Minister for Defence, together with naval, military, and air officers, are members. It corresponds generally with the Committee of Imperial Defence, is responsible for defence policy and for co-ordinating the requirements of the three services; it reports to the Cabinet, which, as in the United Kingdom, retains full power to reject any

recommendations. In Canada the Department of National Defence was created under an act of 1922; the Minister of National Defence is advised by a Defence Council including the Chief of the General Staff and the Director of Naval Services. New Zealand is content with a Minister of Defence, who controls the Naval Department, and the Military Forces, which are directed by a General Officer Commanding. In the Union the Minister of Defence is aided by advice on large issues by a Council composed of himself, the Secretary of Defence, who is also Chief of the General Staff, and four non-officials appointed on the score of military experience by the Governor-General In the Irish Free State military organization has been the subject of repeated discussion, and military policy has varied from a determination to maintain a force capable not merely of maintaining internal order but also of repelling any external attack, to a preference for a body calculated only on the basis of the preservation of public peace, a policy demanded on economic grounds. It is recognized, and in some quarters deeply resented, that the presence on Irish territory in time of war of British forces in accordance with the wide rights granted by Articles 6 and 7 of the treaty of 1921, would inevitably lead a foreign State, if it deemed it desirable, to treat the Free State as a belligerent, even if that Dominion were anxious to remain passive or to claim the power to remain neutral.

CHAPTER VII

IMPERIAL CO-OPERATION

THE development of autonomy in the Dominions has taken place contemporaneously with the evolution of the means of effective consultation on matters of common interest. As long as the Dominions were comparatively weak, there was a marked disinclination to any close relations with the United Kingdom, when the first Colonial Conference was summoned to meet in 1887 on the occasion of the royal jubilee, it was deemed necessary to assure the colonies that Imperial Federation would not be proposed. The next two Conferences of 1897 and 1902 were both connected with formal royal events, but that of 1907 was based on the need of co-operation and it definitely declared the constitution of the Imperial Conference as a meeting of the Prime Ministers of the Empire, the chairmanship resting with the United Kingdom, to be held at intervals of four years, while minor matters were to be adjusted by *ad hoc* Conferences of which the Naval and Military Conference of 1909 and the Copyright Conference of 1910 were the earliest examples. India was deliberately excluded from representation save by the Secretary of State for India. The first Imperial Conference met in 1911, but in 1915 war conditions prevented a meeting, though Mr. Hughes and other individual Dominion ministers visited England to discuss war problems. In 1917, however, the needs of the Empire elicited meetings of the heads of the Governments of the Empire on Mr. Lloyd George's invitation. For war purposes proper they sat under his chairmanship as the Imperial War Cabinet, in which they discussed with the British War Cabinet problems of war and peace; under the chairmanship of the Colonial Secretary, as the Imperial War Conference, minor war issues and non-war business were considered. The procedure was repeated in 1918, and the transfer of the War Cabinet to Paris to serve as the British Empire Delegation to the Peace Conference has been already mentioned.

The Imperial War Cabinet was, in Sir Robert Borden's

phrase, a 'Cabinet of Governments' and differed fundamentally from a normal Cabinet; it had no head, Mr. Lloyd George was only *primus inter pares*, its members owed allegiance to different Parliaments; majority decisions were impossible; the Dominion ministers could only assent subject to their being able to convince their colleagues and Parliaments of the need of the action proposed; the War Cabinet had no executive to which it could issue orders. But it afforded an admirable means of discussion and exchange of views, and allowed the Dominion ministers to exert their just influence. Its decisions on issues of war, when accepted by the British War Cabinet, could at once be carried out by the Foreign Office, War Office, and Admiralty, under whose directions the Dominion forces had been placed. Clearly, however, the organization was impossible for peace purposes, and, after a feeble effort to consider the Conference of 1921 a peace Cabinet, the style of Conference was resumed. The real successor of the War Cabinet in peace is rather the Committee of Imperial Defence, at which Dominion Ministers are encouraged by the Conference of 1926 to discuss frankly all issues of defence affecting the Dominions, while it was then suggested as in 1912 that Defence Committees should be set up in the Dominions. The Cabinet and Conferences of the war period remedied one omission; India in view of her enormous contributions to the war was accorded the place unwisely withheld in 1907. Moreover the Conference of 1917 marked out clearly the mode of advance in Imperial relations. It framed a resolution, intended by General Smuts and Sir R. Borden to dispose of the propaganda for federation which had intempestively been revived, which asserts that any constitutional readjustment (which must be postponed to a Conference after the war) 'while thoroughly preserving all existing powers of self-government and complete control of domestic affairs should be based upon a full recognition of the Dominions as autonomous nations of an Imperial Commonwealth, and of India as an important portion of the same, should recognize the right of the Dominions and India to an adequate voice in foreign policy and foreign relations and should pro-

vide effective arrangements for continuous consultation in all important matters of common Imperial concern and for such necessary concerted action founded on consultation as the several governments may determine' 'It is noteworthy how the desire for autonomy and freedom from interference in all domestic issues is as fundamental as the desire for autonomous co-operation. The motive underlying the latter may be found in the common allegiance which is not, as in the case of the United Kingdom and Hanover, a mere legal figment, but rests on common ideals, common interests, a common culture, and in part on community of race. It is significant that, precisely in proportion as community in these matters is weaker, as in Quebec, South Africa, and the Free State, the aim for autonomy is expressed almost to the exclusion of effective co-operation.'

The Imperial Conference is undoubtedly the appropriate mode of carrying out for general purposes the design of autonomous co-operation laid down in 1917. The essence of the Conference is that its resolutions are no more than expressions of opinion by the Governments represented; they impose no obligation, and it is utterly misleading to compare them to treaties which are morally, if not legally, binding. It is, of course, obvious that it is unfortunate that resolutions of the Conference accepted by any member should not be given effect, but the alternative is to admit that no resolutions of any importance would ever be passed. Dominion Parliaments are still jealous of the possibility of their spokesmen being overwhelmed by the superior dialectic of British Ministers, or the fascinations of Imperial hospitality, into forgetfulness of the needs of the Dominions, and it is all to the good that they should be able to express their intentions, without having to consider whether they can absolutely pledge themselves to carrying them out. It is, of course, clear that normally a Government ought to bring before its Parliament, with a recommendation of approval, any policy which it has adopted; but there is no binding obligation even to take this step if, on fuller reflection in the light of local feeling expressed after publication of the resolutions of the

Conference, ministers feel that public opinion will not support the course contemplated Still less is there any obligation on an incoming Government, which has defeated its predecessor on an issue arising out of the Conference, to carry out views which they have successfully fought. One can understand that General Smuts resented the failure of the Labour Government in 1924 to carry out the policy of further preferences accepted by Mr. Baldwin at the Conference of 1923, but it is clear that the complaint of British action was untenable. General Smuts again at the Conference of 1923 disapproved the action of the Conference of 1921 in passing a resolution on the position of Indians in the Dominions when South Africa dissented. But, as there is no question of decisions, it is plain that it is proper for those parts of the Empire which concur in a policy to state the fact; no doubt a resolution approved by the greater part of the Empire may have some moral weight in the rest of the British Commonwealth, but it claims no coercive force, and, if absolute unanimity were demanded, no resolutions at all might be possible. The Labour Government in 1924, recognizing the difficulties arising from changes of policy after resolutions had been adopted, made tentative suggestions; the Dominion Parliaments might be consulted in advance so that their Governments could come prepared with a policy which they could carry, or the oppositions as well as Governments might be represented at the Conference. Both suggestions were rejected by the Dominions, and their demerits are obvious. If Governments come with their hands tied by their Parliaments, discussion becomes very ineffective; if Parliaments were expected to follow decisions of the Conference concluded with oppositions represented, it might be held that an inroad was being made on Dominion autonomy, and that a superior Imperial Council was being called into existence. The anxiety of the British Government to implement any resolutions is undeniable; when it turned out that the preference proposals of 1923 could not be made good in that form, a grant of £1,000,000 a year to be spent by the Empire Marketing Board in promoting the use of imperial products was promptly

substituted, though in South Africa at least the boon has been slighted

Nor, despite the slow working of the Conference procedure, have its results been negligible. The Conferences, especially those of 1923 and 1926, have furthered markedly the evolution of the treaty relations of the Dominions and the definition of the present Imperial constitution; they have elaborated the law of nationality, promoted preferential trade, secured enormous improvements in postal and telegraphic communications, effected improvements in shipping legislation, aided uniformity in the law of copyright, patents, trade-marks and companies, improved the collection of statistics and induced simplification of customs formalities, encouraged the conservation of raw materials, promoted co-operation in Empire exhibits at home and abroad, lightened the burden of double income-tax, and encouraged the setting up of several useful forms of co-operation in research, which have suggested to the League of Nations international action in the same sense. Under their auspices the process of Dominion settlement has been promoted; the Empire Settlement Act, 1922, with its grant of £3,000,000 a year, may be deemed a direct result of the Conference system, and even further aid has been promised by the Labour Government in 1929. The meetings of the Conference, moreover, even when not immediately productive of results, secure the wide discussion of the issues which are raised, and by this means serve powerfully to mould public opinion in the Empire to effective purposes.

The Conference serves also as an effective way of reconciling conflicts of interest between the several parts of the Empire, and above all of ameliorating relations between India and the Dominions. Self-preservation is the only but adequate excuse for the determination of the Dominions to forbid any but the most limited Indian immigration for purposes of settlement, and the exclusion policy is difficult to reconcile with the claims of common citizenship. But, thanks to the Conferences, it has at least been agreed that the methods of exclusion should be as courteous as possible, that exclusion should be confined to immigrants desiring to settle, and that

visits of students, merchants, and tourists should be rendered easy. It has also been agreed that India has the right to apply to the Dominions the same treatment as they accord to her in matters of immigration. On the question of the treatment of Indians lawfully resident in the Dominions, there has been divergence of view. While the other Dominions have accepted in principle—though not fully in practice—the rule that Indians should be treated politically and economically on the same footing as other British subjects, the Union has dissented But the discussions at the Conferences were not fruitless; they led to direct negotiations between India and the Union, followed by a conference in South Africa, at which accord was attained in 1927. The Union promised in principle to promote the higher civilization and assimilation to European status of those Indians who were willing to aim at this result, while India was to aid in the repatriation of Indians to whom this ideal was unattractive or impossible. It is clear that the real aim of South Africa is repatriation, but, though this is a hardship and injustice to Indians who have been born and lived all their lives in South Africa, contributing largely to its economic development, still it is better that a settlement should be reached in lieu of the prosecution of a series of unjust measures aiming at forcing Indians to leave a country in which they were at every turn hampered in making a living and shut off from skilled occupations by the Union Colour Bar legislation of 1926. But for the accord Indians would have been segregated in large measure both in business and residence, and cut off from successful occupation in their favourite business of petty trade. It must be added that in British Columbia prejudice still runs strong against both Indians and Japanese, but the Dominion has so far succeeded in preventing any extreme anti-Asiatic legislation, and has refused to allow total exclusion from lucrative employment.

In other matters also the Conference may serve to liquidate disputes of a political character between the Dominions and the United Kingdom or between two or more Dominions. In matters of a more strictly legal character, which, if arising

between foreign States, would be referred to the Permanent Court of International Justice, the Privy Council with full Dominion representation might be employed as an arbitral tribunal, for its authority would be of weight even if its findings had no legal sanction. Incidents such as the deportation illegally of certain British subjects from South Africa in 1914 and the Queensland confiscatory legislation of 1920 might thus have been dealt with, if other means had not been effective in remedying the wrongs committed on British interests. The Irish boundary and the Labrador disputes were so referred in 1924 and 1927 But it may be hoped that normally discussions at the Conference in the last resort may unravel Imperial tangles and avoid formal reference to arbitration, which must remain as between autonomous communities the final resort in case of hopeless disagreement.

Apart from the Conferences, which cannot be held frequently so long as distance presents the present obstacles to the presence of delegates of Australia and New Zealand, the business of Imperial co-operation is the prime duty of the Dominions Office and the Departments of External Affairs of the Dominions, acting under the close supervision of the Prime Ministers. As early as the Conference of 1911 it was suggested that the questions affecting the Dominions should be transferred from the Colonial Office with its Crown colony business and associations to the Prime Minister, but Mr Asquith declined to assume so heavy a burden. In 1918, however, the War Conference and Cabinet decided that the Prime Ministers could correspond direct with the British Prime Minister on all matters which they held to be of Cabinet importance, and it was contemplated that the suggestion of 1912 in favour of the presence for considerable periods in England of resident ministers from the Dominions might be acted upon, use being made of the Committee of Imperial Defence for effective exchange of views on policy. The latter plan was not persisted in, partly owing to the fact that Dominion Ministers at the close of the war were so deeply engaged in the work of reconstruction that they had little time for Imperial affairs. But later greater interest was taken, and the

Colonial Office became busy in transmitting to the Dominions the fullest telegraphic and written information on foreign affairs in order to enable the Dominions to offer their views and take a share in formulating policy. The formal creation in 1925 of the Secretary of State for Dominion Affairs—an office held, however, along with the Colonial Secretaryship—made no substantial change in the position, but greater efficiency in the Dominion handling of foreign issues was induced by the extension and reorganization of Departments of External Affairs in the Dominions, while considerable use was made of the Dominion High Commissioners in London. A change of form rather than of substance was effected in 1927, when the Governor-General ceased to be the normal channel of communication between Governments in accordance with the resolution of the Imperial Conference of 1926, but this led to an important development In accordance with the wishes of Canada the office of High Commissioner for the United Kingdom at Ottawa was created in 1928 as a counterpart to the High Commissionership of the Dominion in London, but with more definitely political as well as economic functions. Direct communications between the Prime Ministers or Departments are thus supported by personal representations through the High Commissioners. In the Union, which regards its representative in London as Minister Plenipotentiary, the position is more complex, for the Governor-General is also still High Commissioner for the Bechuanaland Protectorate, Basutoland, and Swaziland, acting under Imperial instructions in this capacity, while the representation of the British Government in Union matters is conferred on the Imperial Secretary, the High Commissioner's adviser. The system of British High Commissioners has not yet been generally applied, but liaison officers help to keep Australia and New Zealand in contact with the Foreign Office and to give a personal touch The principle of continuous consultation in all foreign affairs, enforced by the Conference of 1926, necessitates the development of the means of dealing with these issues in the Dominions; but progress must be gradual, for popular opinion in the Dominions has not yet become

accustomed to regarding foreign relations as deeply affecting these territories Hence, as the Conference recognized, the conduct of foreign relations still remains and will for a considerable period remain largely in the hands of the British Government. But the principle of Dominion autonomy is conceded, and the creation of diplomatic representation of the Dominions is an important step towards the fuller participation of the Dominions in the framing of foreign policy, as is their activity in connexion with the League of Nations. It is significant that Canada has established an office at Geneva to keep her *au courant* with affairs of League importance. The association of the Dominions in the conduct of foreign policy enormously increases the complexity of the problem, but it would be premature to despair of the possibility of its successful solution, so remarkable has been the power of adaptation shown by the political genius of the British peoples.

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